North Carolina Child Support Statutes

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Contents

Introduction

A Brief History of Child Support Law in North Carolina

North Carolina's child support statutes are a collection of hundreds of laws that have been enacted over the past 250 years.

North Carolina's first child support statute was the "bastardy law," enacted in 1741. Under this law, a man who was found to be the father of an illegitimate child could be "charged with the maintenance" of his child in an amount determined by the court and required to post a secured bond to indemnify the county against having to support his child. The General Assembly repealed the old "bastardy" law in 1933 and enacted a new law (now codified as Chapter 49 of the General Statutes) making it a misdemeanor for *either parent* to willfully neglect or refuse to support his or her illegitimate child. The amended statute also required the court, upon conviction of a defendant for nonsupport, to enter an order requiring him or her to make payments for the support of the child. In 1967 the General Assembly enacted legislation creating a civil action to establish the paternity of, and obtain support for, illegitimate children.

Even before 1741, the common law recognized the duty of a husband to support the children born to his wife during their marriage. However, the legal obligation of a father to support his legitimate children was not statutorily codified until 1869, when the General Assembly enacted legislation making it a misdemeanor for a husband to willfully neglect to provide adequate support for his wife "and the child and children which he has begotten upon her" or to willfully abandon his wife and children without providing adequate support. In 1917 the General Assembly amended the 1869 law to authorize the court, upon the conviction of a defendant of abandonment and nonsupport, to "make such order or orders as in [the court's] judgment will best provide for the support, as far as may be necessary, of the deserted wife or children or both, from the property or labor of the defendant." The statute was amended again in 1957 to make the willful failure of a mother to support her natural or adopted child a misdemeanor.

In 1871 the General Assembly enacted legislation authorizing the courts, in actions for absolute divorce or divorce from bed and board, to enter orders relating to the proper "maintenance of the children of the marriage." Disputes between separated parents with respect to custody and support of their children were decided under the habeas corpus statutes codified in Chapter 17 of the General Statutes.

Responding to the increasing number of cases involving interstate child support issues, North Carolina adopted the Uniform Reciprocal Enforcement of Support Act (URESA) in 1951 and enacted the Revised Uniform Reciprocal Enforcement of Support Act in 1975 (codified as Chapter 52A of the General Statutes). In 1992 the National Conference of Commissioners on Uniform State Laws adopted a new Uniform Interstate Family Support Act (UIFSA) to replace URESA and RURESA. On January 1, 1996, North Carolina became the twenty-sixth state to implement UIFSA, which is codified as Chapter 52C of the General Statutes.

In 1967 the General Assembly completely revised North Carolina's child support statutes as part of its recodification of Chapter 50 of the General Statutes. The revised child support law authorized either parent (or any other person, agency, or institution) having custody of a child, or bringing an action for custody of a child, to file a civil action seeking support on behalf of the child. Before 1981, the father of a legitimate child was primarily responsible for the support of his child, and the child's mother was secondarily responsible for the child's support. In 1981 the

General Assembly amended G.S. 50-13.4(b) to provide that *both parents* of a child are primarily responsible for the support of the child.

Before 1975, child support law (like other aspects of family law) was primarily a matter of state, rather than federal, law. During the past three decades, however, the federal government has taken an increased interest in child support. In 1975 Congress enacted Title IV-D of the Social Security Act, which required states, as a condition for receiving federal funding for the Aid to Families with Dependent Children (AFDC) program (now, Temporary Assistance for Needy Families), to establish a statewide child support enforcement program (the IV-D program) that met specific requirements established by federal law and regulations. Since 1975 the federal IV-D law has been amended, expanded, and strengthened by the Child Support Amendments of 1984, the Bradley Amendment of 1986, the Family Support Act of 1988, the Personal Work Opportunity and Responsibility Act of 1996, and the Child Support Performance and Incentives Act of 1998. In addition, Congress enacted the federal Full Faith and Credit for Child Support Orders Act in 1994 (amended in 1996) and the federal Child Support Recovery Act in 1992 (amended in 1996 and 1998).

In response to the federal IV-D law, North Carolina has also amended, expanded, and strengthened its child support laws, establishing a state- and county-administered child support enforcement (IV-D) system (1975), enacting procedures for the collection of child support through income-withholding (1986, 1989, and 1993); prohibiting the retroactive modification of child support arrearages (1987); adopting UIFSA (1995); enacting legislation authorizing the revocation of drivers licenses, hunting and fishing licenses, and business and professional licenses of obligors who are delinquent in making court-ordered child support payments (1995); and expanding and improving the remedies for establishing and enforcing paternity and child support orders (1997, 1999, and 2003).

The most significant recent change in state child support law, however, has been North Carolina's adoption of presumptive child support guidelines (as required by the federal Child Support Enforcement Amendments and the Family Support Act of 1988). North Carolina's first advisory child support guidelines were adopted by the Conference of Chief District Court Judges in 1987 under authority delegated by the North Carolina General Assembly. Presumptive child support guidelines were adopted in 1990 and revised by the Conference of Chief District Court Judges in 1991, 1994, 1998, and 2002.

Overview and Purpose of This Compilation

North Carolina's General Statutes contain more than 200 statutory provisions relating to child support and paternity. North Carolina's child support laws, however, are not codified in one chapter of the General Statutes. Instead, they are scattered throughout more than a dozen statutory chapters. Statutory provisions relating to criminal nonsupport proceedings are found in Chapter 14. Most of the statutes relating to paternity and support of illegitimate children are found in Chapter 49. UIFSA is codified as Chapter 52C. And while many child support statutes are found in Chapters 50 (Divorce) and 110 (Child Welfare), other statutes relating to procedures in child support cases and remedies for the enforcement of child support orders are included in Chapter 5A (Contempt), Chapter 1 (Civil Procedure), Chapter 105A (Setoff Debt Collection Act), Chapter 44 (Liens), and Chapter 15A (Criminal Procedure). Statutes relating to child support are also found in a number of unlikely places, including Chapter 58 (Insurance) and Chapter 7B (Juvenile Code).

The purpose of this publication is to bring *all* of North Carolina's statutes regarding paternity and child support together in one volume and to make these statutes readily available to North Carolina judges, attorneys, and government officials who handle paternity and child support cases.

North Carolina Child Support Statutes is a compilation of the state statutes (in effect as of November 1, 2003) that relate to civil and criminal actions for child support; establishment of paternity; establishment, enforcement, and modification of child support orders; interstate child support enforcement; and the child support enforcement program. The publication also includes notes regarding these statutory provisions; the text of North Carolina's Child Support Guidelines; cross-references; and a subject index.

North Carolina's law regarding child support and paternity is based on decisions by the state court of appeals and the state supreme court as well as on statutory provisions enacted by the General Assembly. The notes after many of the statutory sections refer readers to some of the more significant recent court decisions that interpret or apply North Carolina's child support statutes or establish important principles of child support law. The notes reflect reported appellate court decisions through September 30, 2003.

The next edition of *North Carolina Child Support Statutes* will be published in November, 2005.

Although it is not possible to include in one volume *all* of the statutory provisions, rules of civil procedure, or rules of evidence that might be relevant or applicable in every criminal or civil child support proceeding, I have tried to include in this compilation all of the statutes that are directly applicable to child support and paternity cases and commonly used by judges, clerks, attorneys, and child support enforcement agencies. Despite my effort to be both comprehensive and accurate, it is possible (and entirely likely) that I have inadvertently omitted a statutory provision that should have been included, made a mistake in copying the statutory provisions from other sources (the 2002 compilation of child support statutes published by the School of Government, the General Assembly's unofficial on-line version of the General Statutes, and other unofficial electronic versions of North Carolina statutes), or overlooked a recent statutory change or case. Readers are encouraged to consult the *official* compilation of North Carolina's General Statutes as well as this compilation and to contact me by phone (919-966-4289) or e-mail (saxon@iogmail.iog.unc.edu) regarding omissions, errors, or suggested changes or improvements to this compilation.

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Chapel Hill, North Carolina
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G.S. Chapters 1 through 49A

General Statutes of North Carolina

Chapter 1
Civil Procedure

Article 5
Limitations, Other Than Real Property

G.S. 1-47. Ten years.

Within ten years an action —

(1) Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its rendition. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.

* * *

Notes

See also G.S. 1-52 (three-year statute of limitations for civil actions regarding prior maintenance of minor child); G.S. 49-14(c) (statute of limitations for civil actions to establish paternity of minor child); G.S. 52C-6-604 (statute of limitations in Uniform Interstate Family Support Act [UIFSA] proceedings); G.S. 110-135 (statute of limitations for civil actions for reimbursement of public assistance paid on behalf of dependent child).

Child support orders are money judgments that fall within this section's ten-year statute of limitations. The statute of limitations for a past-due child support payment begins to run on the date that each payment becomes due, not on the date child support was initially awarded. In determining whether collection of child support arrearages is barred by the ten-year statute of limitations, child support payments by the obligor should be credited first against the oldest arrearages. *See* Belcher v. Averette, 136 N.C. App. 803, 526 S.E.2d 663 (2000).

When support arrearages are reduced to judgment, the judgment for arrears may be enforced for ten years following the date it was entered, even if the arrearages included in the judgment accrued more than ten years prior to the date of execution of the judgment. *See* Silvering v. Vito, 107 N.C. App. 270, 419 S.E.2d 360 (1992).

If collection of child support arrearages is not barred by G.S. 1-47, the fact that the child is no longer a minor will not bar collection of child support arrearages that accrued while the child was a minor. *See* Fitch v. Fitch, 115 N.C. App. 722, 446 S.E.2d 138 (1994).

The ten-year statute of limitations for collection of child support arrearages is an affirmative defense that may be waived if not specifically raised by the obligor. *See* Adkins v. Adkins, 82 N.C. App. 289, 346 S.E.2d 220 (1986). Laches may not be raised as a defense when collection of child support arrearages is not barred by the ten-year statute of limitations. *See* Stephens v. Hamrick, 86 N.C. App. 556, 358 S.E.2d 547 (1987).

G.S. 1-52. Three years.

Within three years an action—

(1) Upon a contract, obligation or liability arising out of a contract, express or implied, . . .

* * *

Notes

There is no statute of limitations for commencing a child support action on behalf of a minor child. *See* Lenoir County *ex rel.* Cogdell v. Johnson, 46 N.C. App. 182, 264 S.E.2d 816 (1980).

The three-year statute of limitations under this section applies with respect to claims for reimbursement for expenditures made by a custodial parent on behalf of a child prior to the date of filing of a claim for child support (that is, claims for "retroactive child support" or "prior maintenance"). Laches may not be raised as a defense to claim for "prior maintenance" of a minor child. *See* Napowsa v. Langston, 95 N.C. App. 14, 381 S.E.2d 882 (1989).

A claim for "prior maintenance" may be commenced after the child is emancipated if it relates to the period of time before the child's emancipation and is brought within the three-year limitation. *See* Freeman v. Freeman, 103 N.C. App. 801, 407 S.E.2d 262 (1991).

A claim for "prior maintenance" or "retroactive child support" applies only with respect to expenditures made for the support of a child prior to the date a complaint is filed seeking child support or prior maintenance. *See* Taylor v. Taylor, 118 N.C. App. 356, 455 S.E.2d 442 (1995).

An award for "prior maintenance" or "retroactive child support" must be based on findings regarding the actual expenditures made for the child's support and the parent's ability to provide support—it may *not* be determined using the child support guidelines. *See* Stanley v. Stanley, 118 N.C. App. 311, 454 S.E.2d 701 (1995).

A third party may bring a civil action, subject to the limitation established by this section, against a parent to recover the cost of "necessaries" provided to or on behalf of the parent's minor child. *See* Alamance County Hospital v. Neighbors, 315 N.C. 362, 338 S.E.2d 87 (1986).

Article 6A
Jurisdiction

G.S. 1-75.4. Personal jurisdiction, grounds for generally.

A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j), Rule 4(j1), or Rule 4(j3) of the Rules of Civil Procedure under any of the following circumstances:

(1) Local Presence or Status. — In any action, whether the claim arises within or without this State, in which a claim is asserted against a party who when service of process is made upon such party:
   a. Is a natural person present within this State; or
   b. Is a natural person domiciled within this State; or

* * *

(2) Special Jurisdiction Statutes. — In any action which may be brought under statutes of this State that specifically confer grounds for personal jurisdiction.

* * *

(12) Marital Relationship. — In any action under Chapter 50 that arises out of the marital relationship within this State, notwithstanding subsequent departure from the State, if the other party to the marital relationship continues to reside in this State.

Notes

See also G.S. 49-17 (personal jurisdiction over nonresident defendants in civil actions to establish paternity); G.S. 52C-2-201 (personal jurisdiction in Uniform Interstate Family Support Act [UIFSA] proceedings involving paternity or child support).

A North Carolina court must have personal jurisdiction over a nonresident before it may order him or her to pay child support. *See* Kulko v. Superior Court of California, 436 U.S. 84 (1978); Miller v. Kite, 313 N.C. 474, 329 S.E.2d 663 (1985). A North Carolina court may exercise personal jurisdiction over a nonresident only if (1) there is a statutory basis (such as G.S. 1-75.4) for doing so, *and* (2) there are sufficient "minimum contacts" between the nonresident and North Carolina to justify the exercise of long arm jurisdiction under that statute. *See* Miller v. Kite, 313 N.C. 474, 329 S.E.2d 663 (1985). In determining whether there are sufficient "minimum contacts" between the nonresident and North Carolina, the court should consider: (1) the quantity of the contacts, (2) the nature and quality of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) convenience to the parties. *See* Powers v. Parisher, 104 N.C. App. 400, 409 S.E.2d 725 (1991).

The presence of a child in North Carolina and past visits between a nonresident parent and the child in North Carolina are not, standing alone, sufficient bases for exercising long arm jurisdiction over the nonresident in an action to establish a child support order. *See* Miller v. Kite, 313 N.C. 474, 329 S.E.2d 663 (1985).

A court may exercise personal jurisdiction over a nonresident defendant in a child support case if the defendant makes a general appearance or is served with process while present in North Carolina. *See* Bullard v. Bader, 117 N.C. App. 299, 450 S.E.2d 757 (1994); Brookshire v. Brookshire, 89 N.C. App. 48, 365 S.E.2d 307 (1988). A court may exercise personal jurisdiction over a nonresident defendant in a child support case if the defendant signs a consent order or agreement allowing a North Carolina court to exercise personal jurisdiction. *See* Montgomery v. Montgomery, 110 N.C. App. 234, 429 S.E.2d 438 (1993). *See also* Powers v. Parisher, 104 N.C. App. 400, 409 S.E.2d 725 (1991); Harris v. Harris, 104 N.C. App. 574, 410 S.E.2d 527 (1991); Pope v. Pope, 38 N.C. App. 328, 248 S.E.2d 260 (1978); Sherlock v. Sherlock, 143 N.C. App. 300, 545 S.E.2d 757 (2001); Lang v. Lang, ___ N.C. App. ___, 579 S.E.2d 919 (2003) (contacts between parent and state were sufficient to justify exercise of long arm jurisdiction).

Article 28
Execution

* * *

Notes

G.S. Ch. 1, Art. 28 (G.S. 1-302 through G.S. 1-339.71) applies to the execution of civil judgments for child support arrearages. *See* G.S. 50-13.4(f)(8), G.S. 50-13.4(f)(10), and G.S. 50-13.10(b). *See also* G.S. 44-86 (writ of execution to enforce lien for delinquent child support).

Article 31
Supplemental Proceedings

G.S. 1-359. Debtors of judgment debtor may satisfy execution.

After the issuing of an execution against property, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff the amount of the debt, or as much thereof as is necessary to satisfy the execution; and the sheriff's receipt is a sufficient discharge for the amount paid.

Notes

When an execution has been issued in connection with a judgment or lien for child support arrearages, this section allows (but does not require) a bank or financial institution to pay to the sheriff money from a bank account owned in whole or in part by the obligor to the extent

necessary to satisfy the lien or judgment. *See also* G.S. 110-139.2 (data match agreements between financial institutions and child support enforcement agencies).

Other statutory provisions of G.S. Ch. 1, Art. 31 (G.S. 1-352 through G.S.1-368) regarding the use of supplementary proceedings to execute civil judgments, the execution of civil judgments against the property of judgment debtors in the hands of third parties, attachment and execution against debts owed to judgment debtor by third parties, and the appointment of receivers with respect to property of judgment debtors apply to the execution of civil judgments for child support. *See* G.S. 50-13.4(f)(10).

Article 34
Arrest and Bail

* * *

Notes

Arrest and bail is a provisional remedy that may be used *prior* to entry of judgment in a civil case. The statutory provisions of G.S. Ch. 1, Art. 34 (G.S. 1-410 through G.S. 1-439) regarding arrest and bail apply with respect to civil actions for child support. *See* G.S. 1-410(5); G.S. 50-13.4(f)(3).

Article 35
Attachment

* * *

Notes

Attachment is a provisional remedy that may be used *prior* to entry of a judgment in a civil action. The statutory provisions of G.S. Ch. 1, Art. 35 (G.S. 1-440.1 through G.S. 1-440.46) regarding attachment apply with respect to civil actions for child support. *See* G.S. 1-440.2; G.S. 50-13.4(f)(4).

Chapter 1A
Rules of Civil Procedure

Article 7
Judgment

G.S. 1A-1, Rule 55. Default.

* * *

(b) *Judgment*. — Judgment by default may be entered as follows:

* * *

(2) By the Judge. —

. . . If the plaintiff seeks to establish paternity under Article 3 of Chapter 49 of the General Statutes and the defendant fails to appear, the judge shall enter judgment by default.

Notes

See also G.S. 49-14 through G.S. 49-17 (civil action to establish paternity of illegitimate child). The federal Soldiers' and Sailors' Civil Relief Act (50 U.S.C. Appendix) limits the authority of a court to enter a default judgment against a defendant who is on active duty in the U.S. armed forces.

G.S. 1A-1, Rule 60. Relief from judgment or order.

* * *

(b) *Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.* — On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect;
(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
(4) The judgment is void;
(5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
(6) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this section does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment, order, or proceeding shall be by motion as prescribed in these rules or by an independent action.

* * *

Notes

A motion under Rule 60(b) by a man who has been judicially determined to be the father of a child seeking relief from the prior paternity judgment based on a genetic test proving that he is not, in fact, the child's biological father may be granted only if the motion is filed within one year from the date the prior paternity judgment was entered and the district court determines that relief is warranted under Rule 60(b)(1), (2), or (3). *See* State *ex rel.* Davis v. Adams, 153 N.C. App. 512, 571 S.E.2d 238 (2002). *Cf.* Leach v. Alford, 63 N.C. App. 118, 304 S.E.2d 265 (1983); State *ex rel.* Bright v. Flaskrud, 148 N.C. App. 710, 559 S.E.2d 286 (2002). *See also* Garrison *ex rel.* Chavis v. Barnes, 117 N.C. App. 206, 450 S.E.2d 554 (1994).

G.S. 1A-1, Rule 68.1. Confession of judgment.

(a) For present or future liability. — . . . Such judgment may also be entered for alimony or for support of minor children.

(b) Procedure. — A prospective defendant desiring to confess judgment shall file with the clerk of the superior court as provided in section (c) a statement in writing signed and verified or sworn to by such defendant authorizing the entry of judgment for the amount stated. The statement shall contain the name of the prospective plaintiff, his county of residence, the name of the defendant, his county of residence, and shall concisely show why the defendant is or may become liable to the plaintiff.

* * *

(c) Where entered. — Judgment by confession may be entered only in the county where the defendant resides or has real property or in the county where the plaintiff resides but the entry of judgment in any county shall be conclusive evidence that this section has been complied with.

(d) Form of entry. — When a statement in conformity with this rule is filed with the clerk of the superior court, the clerk shall enter judgment thereon for the amount confessed, and docket the judgment as in other cases, with costs, together with disbursements. The statement, with the judgment, shall become the judgment roll.

(e) Force and effect. — Judgments entered in conformity with this rule shall have the same effect as other judgments except that no judgment by confession shall be held to be res judicata as to any fact in any civil action except in an action on the judgment confessed. When such judgment is for alimony or support of minor children, the failure of the defendant to make any payments as required by such judgment shall subject him to such penalties as may be adjudged by the court as in any other case of contempt of its orders. Executions may be issued and enforced in the same manner as upon other judgments. When the full amount of the judgment is not all due, or is payable in installments, and the installments are not all due, execution may issue upon such judgment for the collection of such sums as have become due and shall be in usual form. Notwithstanding the issue and satisfaction of such execution, the judgment remains as security for the sums thereafter to become due; and whenever any further sum becomes due, execution may in like manner be issued.

Notes

See also G.S. 1-302 through G.S 1-339.71 (execution); G.S. Chapter 5A (contempt); G.S. 50-13.4(f) (enforcement of child support orders); G.S. 50-13.7 and G.S. 50-13.10 (modification of child support orders); G.S. 110-132 (voluntary support agreements); G.S. 110-136.3 through G.S. 110-136.10 (income withholding).

A confession of judgment for child support may not be binding on the obligee with respect to the amount of support if the obligee has not agreed to the amount of support or the amount of support was not determined pursuant to North Carolina's child support guidelines.

Chapter 1C
Enforcement of Judgments

Article 16
Exempt Property

G.S. 1C-1601. What property exempt; waiver; exceptions.

* * *

(e) Exceptions. The exemptions provided in this Article are inapplicable to claims

* * *

(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes;

* * *

Notes

See also G.S. 50-13.4(f)(10); G.S. 15B-17.

See also N.C. Const. art. X, §§ 1, 2, and 5. The "homestead" exemptions in real and personal property and the exemption for life insurance provided under Article X, §§ 1, 2, and 5 of the North Carolina Constitution do not apply with respect to claims for child support. *See* Walker v. Walker, 204 N.C. 210, 167 S.E. 818 (1933).

Property owned jointly by a husband and wife as tenants by the entireties is exempt from debts (including child support arrearages) owed by only one of the spouses. *See In re* Banks, 22 B.R. 891 (Bankr. W.D.N.C. 1982).

Salaries and wages paid to federal employees, federal military and civil service pensions, federal veterans' benefits, and Social Security benefits payable to an obligor are not exempt from execution, attachment, garnishment, or income withholding for child support. *See* 42 U.S.C. § 659; Evans v. Evans, 111 N.C. App. 792, 434 S.E.2d 856 (1993). Federal Supplemental Security

Income (SSI) benefits paid to an obligor are exempt from execution, attachment, garnishment, and income withholding for child support.

Article 17
Uniform Enforcement of Foreign Judgments Act

G.S. 1C-1702. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Foreign Judgment" means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a "child support order," as defined in G.S. 52C-1-101 (The Uniform Interstate Family Support Act). . . .

* * *

Notes

The Uniform Enforcement of Foreign Judgments Act may *not* be used to enforce an out-of-state judgment for child support in North Carolina. In order to enforce an out-of-state judgment for child support in North Carolina, an obligor must register the out-of-state order for enforcement in North Carolina under the Uniform Interstate Family Support Act (UIFSA) (G.S. 52C-6-601 through G.S. 52C-608) or file a common law action in a North Carolina court to "domesticate" the foreign judgment. *See* Pieper v. Pieper, 108 N.C. App. 722, 425 S.E.2d 435 (1993). *Cf.* G.S. 44-86(g) (requiring registration of foreign child support liens under G.S. 1C-1701 through G.S. 1C-1708).

Article 18
North Carolina Foreign Money Judgments Recognition Act

G.S. 1C-1801. Definitions.

As used in this Article:

(1) "Foreign Judgment" means any judgment of a foreign state granting or denying recovery of a sum of money other than . . . a judgment for support in matrimonial or family matters.

* * *

Notes

The North Carolina Foreign Money Judgments Recognition Act may *not* be used to enforce child support orders entered by courts of foreign countries. *See* note to G.S. 1C-1702.

Chapter 5A
Contempt

Article 1
Criminal Contempt

G.S. 5A-11. Criminal contempt.

(a) Except as provided in subsection (b), each of the following is criminal contempt:

* * *

(3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

* * *

The grounds for criminal contempt specified here are exclusive, regardless of any other grounds for criminal contempt which existed at common law.

* * *

Notes

Willful noncompliance with a child support order may be punished by criminal contempt. *See* G.S. 50-13.4(f)(9). *See also* G.S. 52C-3-305(b)(5) (enforcement of child support orders by contempt in UIFSA proceedings).

A person who has been ordered to pay child support in a *civil* action may be held in *criminal* contempt for willfully disobeying that order. *See* Mauney v. Mauney, 268 N.C. 254, 150 S.E.2d 391 (1966). Proceedings for criminal contempt for willful nonpayment of court-ordered child support are not independent criminal actions, but rather are ancillary to the underlying civil or criminal child support action.

A person may not be held in criminal contempt for failing to pay court-ordered child support unless he or she has *willfully* failed to pay child support as required by the order. In most cases, a finding of willful failure to pay court-ordered child support must be based on evidence that the obligor was financially able to pay at least part of his or her court-ordered child support obligation when it became due (or thereafter) and yet deliberately and purposefully failed to do so without justification or excuse. *See* Mauney v. Mauney, 268 N.C. 254, 150 S.E.2d 391 (1966) (civil contempt); Henderson v. Henderson, 307 N.C. 401, 298 S.E.2d 345 (1983); Lamm v. Lamm, 229 N.C. 248, 49 S.E.2d 403 (1948).

The purpose of criminal contempt is to *punish* the contemnor's willful noncompliance with the court's order, not to *compel* the contemnor's compliance with the order. *See* Bishop v. Bishop, 90 N.C. App. 499, 369 S.E.2d 106 (1988).

G.S. 5A-12. Punishment; circumstances for fine or imprisonment; reduction of punishment; other measures.

(a) A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars ($500.00), or any combination of the three, . . .

(b) Except . . . , fine or imprisonment may not be imposed for criminal contempt, whether direct or indirect, unless:

(1) The act or omission was willfully contemptuous; . . .

* * *

(c) The judicial official who finds a person in contempt may at any time withdraw a censure, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt if warranted by the conduct of the contemnor and the ends of justice.

(d) A person held in criminal contempt under this Article shall not, for the same conduct, be found in civil contempt under Article 2 of this Chapter, Civil Contempt.

* * *

Notes

A person who is found in *criminal* contempt for willfully failing to pay court-ordered child support may not be sentenced to jail under an order that allows him or her to be released from jail upon *purging* the contempt (usually by paying all or part of the child support arrearages he or she owes) as in the case of civil contempt. A court, however, may find an obligor in criminal contempt for willfully failing to pay court-ordered child support; sentence him or her to a definite period of incarceration (up to thirty days); *suspend* the sentence for criminal contempt; and place the obligor on probation on the condition that he or she pay all or part of the child support arrearages he or she owes, continue to pay his or her court-ordered child support obligation as it

becomes due, and so forth. *See* Bishop v. Bishop, 90 N.C. App. 499, 369 S.E.2d 106 (1988); Reynolds v. Flynn, 356 N.C. 287, 569 S.E.2d 645 (2002).

G.S. 5A-12(d) formerly allowed the court to hold an individual in *both* criminal and civil contempt for the same conduct. Although an individual still may be *charged* with both criminal and civil contempt for the same conduct, G.S. 5A-12(d) was amended, effective December 1, 1999, to preclude the court from holding him or her in *both* criminal and civil contempt for the same conduct.

G.S. 5A-13. Direct and indirect criminal contempt; proceedings required.

* * *

(b) Any criminal contempt other than direct criminal contempt is indirect criminal contempt and is punishable only after proceedings in accordance with the procedure required by G.S. 5A-15.

Notes

Willful failure to pay child support as required by court order is *indirect* criminal contempt. The court must follow the plenary procedures applicable to indirect criminal contempt under G.S. 5A-15, rather than the summary procedures applicable to direct criminal contempt under G.S. 5A-14.

G.S. 5A-15. Plenary proceedings for contempt.

(a) When a judicial official . . . may not proceed summarily, he may proceed by an order directing the person to appear before a judge at a reasonable time specified in the order and show cause why he should not be held in contempt of court. A copy of the order must be furnished to the person charged. If the criminal contempt is based upon acts before a judge which so involve him that his objectivity may reasonably be questioned, the order must be returned before a different judge.

(b) Proceedings under this section are before a district court judge unless a court superior to the district court issued the order, in which case the proceedings are before that court. Venue lies throughout the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the order was issued.

(c) The person ordered to show cause may move to dismiss the order.

(d) The judge is the trier of facts at the show cause hearing.

(e) The person charged with contempt may not be compelled to be a witness against himself in the hearing.

(f) At the conclusion of the hearing, the judge must enter a finding of guilty or not guilty. If the person is found to be in contempt, the judge must make findings of fact and enter judgment. The facts must be established beyond a reasonable doubt.

(g) The judge presiding over the hearing may appoint a prosecutor or, in the event of an apparent conflict of interest, some other member of the bar to represent the court in hearings for criminal contempt.

Notes

An indigent defendant charged with criminal contempt for willful disobedience of a child support order is entitled to court-appointed counsel. *See* Hammock v. Bencini, 98 N.C. App. 510, 391 S.E.2d 210 (1990). *See also* G.S. 7A-450 through G.S. 7A-458 regarding representation of indigent persons.

G.S. 5A-16. Custody of person charged with criminal contempt.

* * *

(b) If a judicial official who initiates plenary proceedings for contempt under G.S. 5A-15 finds, based on sworn statement or affidavit, probable cause to believe the person ordered to appear will not appear in response to the order, he may issue an order for arrest of the person, pursuant to G.S. 15A-305. A person arrested under this subsection is entitled to release under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.

Notes

See G.S. 15A-305 and G.S. 15A-534. Judges often order the arrest of obligors who fail to appear in criminal or civil contempt proceedings involving nonpayment of court-ordered child support. An obligor who is arrested in connection with such contempt proceedings must be released from custody if he or she posts an *appearance* bond or meets other requirements for pre-trial release under G.S. 15A-534. The bond posted by (or on behalf of) an arrested obligor is an appearance bond—*not* a compliance bond imposed pursuant to G.S. 50-13.4(f)(1). The amount of the appearance bond may not be applied to satisfy the obligor's child support arrearage (unless it is returned to the obligor when he or she appears for the contempt hearing and the obligor agrees to apply it toward his or her child support arrearage, or the bond is garnished through supplemental proceedings or other legal process after the obligor appears). If the obligor fails to appear at the contempt hearing after he or she is released from custody, the bond may be forfeited to the state for the benefit of the public schools. *See* Mussallam v. Mussallam, 321 N.C. 504, 364 S.E.2d 364 (1988) (discussing distinction between appearance bond and compliance bond in contempt proceeding relating to civil action for child custody).

G.S. 5A-17. Appeals.

A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions, except appeal from a finding of contempt by a judicial official inferior to a superior court judge is by hearing de novo before a superior court judge.

Article 2
Civil Contempt

G.S. 5A-21. Civil contempt; imprisonment to compel compliance.

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the order;

(2a) The noncompliance by the person to whom the order is directed is willful; and

(3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order.

(b) A person who is found in civil contempt may be imprisoned as long as the civil contempt continues, subject to the limitations provided in subsections (b1) and (b2) of this section. Notwithstanding subsection (b2) of this section, if a person is found in civil contempt for failure to pay child support or failure to comply with a court order to perform an act that does not require the payment of a monetary judgment, the person may be imprisoned as long as the civil contempt continues without further hearing.

* * *

(c) A person who is found in civil contempt under this Article shall not, for the same conduct, be found in criminal contempt under Article 1 of this Chapter.

Notes

Civil contempt may be used as a remedy to enforce compliance with a court order requiring payment of child support. *See* G.S. 50-13.4(f)(9). *See also* G.S. 50-13.9(d) (contempt in enforcement proceedings initiated by clerks of superior court; G.S. 52C-3-305(b)(5) (enforcement of child support orders by contempt in UIFSA proceedings).

G.S. 5A-21(c) formerly allowed the court to hold an individual in *both* civil and criminal contempt for the same conduct. Although an individual still may be *charged* with both civil and criminal contempt for the same conduct, G.S. 5A-21(c) was amended, effective December 1, 1999, to preclude the court from holding him or her in *both* civil and criminal contempt for the same conduct.

The purpose of civil contempt is to *compel* an obligor to comply with a court order. *See* Bishop v. Bishop, 90 N.C. App. 499, 369 S.E.2d 106 (1988) (discussing distinction between civil and criminal contempt).

The limitations on incarceration for civil contempt under G.S. 5A-21(b1) and (b2) do not apply to cases in which a person is found in civil contempt for failing to pay court-ordered child support or to comply with other provisions of child support orders that do not involve the payment of a money judgment. An obligor who is found in civil contempt for willfully failing to pay court-ordered child support may be committed to jail for an *indefinite* period of time and may remain incarcerated indefinitely as long as he or she has the ability to satisfy appropriate purge conditions but refuses to do so. The court should not "sentence" an obligor to serve thirty days (or any other definite term) in jail when the obligor is found in civil contempt.

An obligor may not be held in civil contempt for failure to make court-ordered child support payments unless his or her failure to pay child support is willful *and* he or she has the *present ability* to comply with the order or to take reasonable measures that would enable him or her to comply with the order. The conditions under which an obligor may purge himself or herself of contempt must be conditions that he or she has the *actual*, *present ability* to meet, so that the obligor "holds the keys to his own jail by virtue of his ability to comply." Purge conditions established in civil contempt proceedings may not require the obligor to make continued or *future* child support payments. *See* Mauney v. Mauney, 268 N.C. 254, 150 S.E.2d 391 (1966); Hodges v. Hodges, 64 N.C. App. 550, 307 S.E.2d 575 (1983); Teachey v. Teachey, 46 N.C. App. 332, 264 S.E.2d 786 (1980).

An obligor who is ordered to show cause for failing to pay court-ordered child support may not be held in civil contempt if he or she pays the full amount of the child support arrearage he or she owes before the time of the contempt hearing. *See* Reynolds v. Reynolds, 147 N.C. App. 566, 557 S.E.2d 126 (2001), *rev'd on other grounds*, 356 N.C. 287, 569 S.E.2d 645 (2002).

G.S. 5A-22. Release when civil contempt no longer continues.

(a) A person imprisoned for civil contempt must be released when his civil contempt no longer continues. The order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt. Upon finding compliance with the specifications, the sheriff or other officer having custody may release the person without a further order from the court.

(b) On motion of the contemnor, the court must determine if he is subject to release and, on an affirmative determination, order his release. The motion must be directed to the judge who found civil contempt unless he is not available. Then the motion must be made to a judge of the same division in the same district court district as defined in G.S. 7A-133 or superior court

district or set of districts as defined in G.S. 7A-41.1, as the case may be. The contemnor may also seek his release under other procedures available under the law of this State.

Notes

An obligor who is incarcerated for civil contempt for failing to pay court-ordered child support must be released if he or she satisfies the purge conditions established by the court *or* no longer has the ability to satisfy those conditions or other appropriate conditions for purging himself or herself of contempt.

G.S. 5A-23. Proceedings for civil contempt.

(a) Proceedings for civil contempt are by motion pursuant to G.S. 5A-23(a1), by the order of a judicial official directing the alleged contemnor to appear at a specified reasonable time and show cause why he should not be held in civil contempt, or by the notice of a judicial official that the alleged contemnor will be held in contempt unless he appears at a specified reasonable time and shows cause why he should not be held in contempt. The order or notice must be given at least five days in advance of the hearing unless good cause is shown. The order or notice may be issued on the motion and sworn statement or affidavit of one with an interest in enforcing the order, including a judge, and a finding by the judicial official of probable cause to believe there is civil contempt.

(a1) Proceedings for civil contempt may be initiated by motion of an aggrieved party giving notice to the alleged contemnor to appear before the court for a hearing on whether the alleged contemnor should be held in civil contempt. A copy of the motion and notice must be served on the alleged contemnor at least five days in advance of the hearing unless good cause is shown. The motion must include a sworn statement or affidavit by the aggrieved party setting forth the reasons why the alleged contemnor should be held in civil contempt. The burden of proof in a hearing pursuant to this subsection shall be on the aggrieved party.

(b) Except when the General Statutes specifically provide for the exercise of contempt power by the clerk of superior court, proceedings under this section are before a district court judge, unless a court superior to the district court issued the order in which case the proceedings are before that court. When the proceedings are before a superior court, venue is in the superior court district or set of districts as defined in G.S. 7A-41.1 of the court which issued the order. Otherwise, venue is in the county where the order was issued.

(c) The person ordered to show cause may move to dismiss the order.

(d) The judicial official is the trier of facts at the show cause hearing.

(e) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged contemnor on each of the elements set out in G.S. 5A-21(a). If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt.

(f) A person with an interest in enforcing the order may present the case for a finding of civil contempt for failure to comply with an order.

(g) A person who is found in civil contempt under this Article shall not, for the same conduct, be found in criminal contempt under Article 1 of this Chapter.

Notes

An obligor who is ordered to show cause why he or she should not be held in civil contempt for willfully failing to pay court-ordered child support has the burden of proving that he or she is not in contempt. *See* Belcher v. Averette, 136 N.C. App. 803, 526 S.E.2d 663 (2000); Shumaker v. Shumaker, 137 N.C. App. 72, 527 S.E.2d 55 (2000); Hartsell v. Hartsell, 99 N.C. App. 380, 393 S.E.2d 570 (1990), *aff'd,* 328 N.C. 729, 403 S.E.2d 307 (1991); *cf.* Henderson v. Henderson, 307 N.C. 401, 298 S.E.2d 345 (1983); G.S. 5A-23(a1).

An indigent obligor who is ordered to show cause for failing to pay court-ordered child support has the right to court-appointed counsel if the court determines he or she may be incarcerated for civil contempt. *See* McBride v. McBride, 334 N.C. 124, 431 S.E.2d 14 (1993). *See also* G.S. 7A-450 through G.S. 7A-458 regarding representation of indigent persons.

G.S. 5A-23(a1) was enacted in 1999 and applies to civil contempt proceedings commenced on or after December 1, 1999.

G.S. 5A-24. Appeals.

A person found in civil contempt may appeal in the manner provided for appeals in civil actions.

Notes

An appeal from the order of a district court judge holding an obligor in civil contempt in a civil action for child support is to the North Carolina Court of Appeals. *See* G.S. 7A-27(c).

G.S. 5A-25. Proceedings as for contempt and civil contempt.

Whenever the laws of North Carolina call for proceedings as for contempt, the proceedings are those for civil contempt set out in this Article.

Chapter 6
Liability for Court Costs

Article 3
Civil Actions and Proceedings

G.S. 6-21. Costs allowed either party or apportioned in discretion of court.

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

* * *

(10) In proceedings regarding illegitimate children under Article 3, Chapter 49 of the General Statutes.

* * *

The word "costs" as the same appears and is used in this section shall be construed to include reasonable attorneys' fees in such amounts as the court shall in its discretion determine and allow. . . .

Notes

See also G.S. 8-50.1; G.S. 49-14 through G.S. 49-17.

See Smith v. Price, 315 N.C. 523, 340 S.E.2d 408 (1986); Wake County *ex rel*. Denning v. Ferrell, 71 N.C. App. 185, 321 S.E.2d 913 (1984).

Chapter 7A
Judicial Department

Article 16
Magistrates

G.S. 7A-178. Magistrate as child support hearing officer.

A magistrate who meets the qualifications of G.S. 50-39 and is properly designated pursuant to G.S. Chapter 50, Article 2, to serve as a child support hearing officer, may serve in that capacity and has the authority and responsibility assigned to child support hearing officers by Chapter 50.

Notes

See also G.S. 50-30 through G.S. 50-39. The provisions of G.S. 7A-178 and Article 2 of Chapter 50 of the General Statutes have *not* been implemented.

Article 17
Clerical Functions in the District Court

G.S. 7A-183. Clerk or assistant clerk as child support hearing officer.

A clerk or assistant clerk of superior court who meets the qualifications of G.S. 50-39 and is properly designated pursuant to G.S. Chapter 50, Article 2, to serve as a child support hearing officer, may serve in that capacity and has the authority and responsibility assigned to child support hearing officers by Chapter 50.

Notes

See also G.S. 50-30 through G.S. 50-39. The provisions of G.S. 7A-183 and Article 2 of Chapter 50 of the General Statutes have *not* been implemented.

Article 20
Original Civil Jurisdiction of the Trial Divisions

G.S. 7A-244. Domestic relations.

The district court division is the proper division without regard to the amount in controversy, for the trial of civil actions and proceedings for annulment, divorce, equitable distribution of property, alimony, child support, child custody and the enforcement of separation or property settlement agreements between spouses, or recovery for the breach thereof.

Chapter 7B
Juvenile Code

Subchapter I
Abuse, Neglect, Dependency

Article 5
Temporary Custody; Custody Hearings

G.S. 7B-506. Hearing to determine need for continued nonsecure custody.

* * *

(h) At each hearing to determine the need for continued custody, the court shall:

(1) Inquire as to the identity and location of any missing parent and as to whether paternity is at issue. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent, as well as efforts undertaken to establish paternity when paternity is at issue. The order may provide for specific efforts aimed at determining the identify and location of any missing parent, as well as specific efforts aimed at establishing paternity.

* * *

Article 9
Dispositions

G.S. 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or dependent.

* * *

(d) At the dispositional hearing or a subsequent hearing, when legal custody of a juvenile is vested in someone other than the juvenile's parent, if the court finds that the parent is able to do so, the court may order that the parent pay a reasonable sum that will cover, in whole or in part, the support of the juvenile after the order is entered. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

* * *

(e) Upon motion of a party or upon the court's own motion, the court may issue an order directing the parent, guardian, custodian, or caretaker served with a copy of the summons pursuant to G.S. 7B-407 to appear and show cause why the parent, guardian, custodian, or caretaker should not be found or held in civil or criminal contempt for willfully failing to comply with an order of the court. Chapter 5A of the General Statutes shall govern contempt proceedings initiated pursuant to this section.

Notes

See also G.S. Chapter 5A (Contempt); North Carolina Child Support Guidelines. G.S. 7B-904(d) does not authorize a juvenile court to order the parent of an abused, neglected, or dependent juvenile to contact a child support enforcement (IV-D) agency so that the agency can establish an order requiring the parent to pay child support for the juvenile. *See In re* Cogdill, 137 N.C. App. 504, 528 S.E.2d 600 (2000). *Cf.* G.S. 7B-904(d1) (S.L. 2001-208, sec. 3, effective Jan. 1, 2002).

Article 11
Termination of Parental Rights

G.S. 7B-1111. Grounds for terminating parental rights.

(a) The court may terminate the parental rights upon a finding of one or more of the following:

* * *

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to

whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or
c. Legitimated the juvenile by marriage to the mother of the juvenile; or
d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

* * *

Notes

See also Bost v. Van Nortwick, 117 N.C. App. 1, 449 S.E.2d 911 (1994); *In re* Becker, 111 N.C. App. 85, 431 S.E.2d 820 (1993); *In re* Roberson, 97 N.C. App. 277, 387 S.E.2d 668 (1990); *In re* Hunt, 127 N.C. App. 370, 489 S.E.2d 428 (1997).

A county (or the state) has the right to intervene in a proceeding seeking termination of parental rights if the child's right to support has been assigned to the county or state as a condition of receiving public assistance and termination of a parent's duty to support the child would adversely affect the county's (or state's) interest with respect to support of the child. *See* Hill v. Hill, 121 N.C. App. 510, 466 S.E.2d 322 (1996).

G.S. 7B-1112. Effects of termination order.

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile . . . arising from the parental relationship. . . .

Notes

An order terminating a parent's rights with respect to a minor child terminates prospectively his or her legal obligation to support the child but probably does not relieve the parent from his or her obligation to pay child support arrearages that are vested and owed as of the date an order terminating parental rights is entered. *See also* G.S. 48A-1-106 (effect of adoption decree with respect to parent's child support obligation).

Subchapter II
Undisciplined and Delinquent Juveniles

Article 27
Authority Over Parents of Juveniles Adjudicated Delinquent or Undisciplined

G.S. 7B-2704. Payment of support or other expenses; assignment of insurance coverage.

At the dispositional hearing or a subsequent hearing, if the court finds that the parent is able to do so, the court may order the parent to:

(1) Pay a reasonable sum that will cover in whole or in part the support of the juvenile. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4;

* * *

All money paid by a parent pursuant to this section shall be paid into the office of the clerk of superior court.

* * *

Notes

See notes to G.S. 7B-904. *See also* G.S. 110-139(f) (payment of child support through the centralized State Child Support Collection and Disbursement Unit).

Subchapter IV
Parental Authority; Emancipation

Article 35
Emancipation

G.S. 7B-3507. Legal effect of final decree.

As of entry of the final decree of emancipation:

* * *

(2) The parent, guardian, or custodian is relieved of all legal duties and obligations owed to the petitioner and is divested of all rights with respect to the petitioner.

(3) The decree is irrevocable.

* * *

Notes

See also G.S. 7B-3509 (emancipation by marriage of minor child); G.S. 48A-2 (definition of "minor child").

An order emancipating a minor child terminates prospectively the parents' obligation to support the child but probably does not relieve a parent from his or her obligation to pay child support arrearages that are vested and owed as of the date of an order of emancipation. *See* G.S. 48A-1-106 (effect of adoption decree with respect to parent's child support obligation).

G.S. 7B-3509. Application of common law.

A married juvenile is emancipated by this Article. All other common-law provisions for emancipation are superseded by this Article.

Chapter 8
Evidence

Article 7
Competency of Witnesses

G.S. 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.

(a) In the trial of any criminal action or proceeding in any court in which the question of parentage arises, regardless of any presumptions with respect to parentage, the court before whom the matter may be brought, upon motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person. Upon receipt of a motion and the entry of an order under the provisions of this subsection, the court shall proceed as follows:

(1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged-parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and

comparisons were conducted properly, then it will be their duty to decide that the alleged-parent is not the natural parent; whereupon, the court shall enter the special verdict of not guilty; and

(2) By requiring the State or defendant, as the case may be, requesting the blood tests and comparisons pursuant to this subsection to initially be responsible for any of the expenses thereof and upon the entry of a special verdict incorporating a finding of parentage or nonparentage, by taxing the expenses for blood tests and comparisons, in addition to any fees for expert witnesses allowed per G.S. 7A-314 whose testimonies supported the admissibility thereof, as costs in accordance with G.S. 7A-304; G.S. Chapter 6, Article 7; or G.S. 7A-315, as applicable.

* * *

(b1) In the trial of any civil action in which the question of parentage arises, the court shall, on motion of a party, order the mother, the child, and the alleged father-defendant to submit to one or more blood or genetic marker tests, to be performed by a duly certified physician or other expert. The court shall require the person requesting the blood or genetic marker tests to pay the costs of the tests. The court may, in its discretion, tax as part of costs the expenses for blood or genetic marker tests and comparisons. Verified documentary evidence of the chain of custody of the blood specimens obtained pursuant to this subsection shall be competent evidence to establish the chain of custody. Any party objecting to or contesting the procedures or results of the blood or genetic marker tests shall file with the court written objections setting forth the basis for the objections and shall serve copies thereof upon all other parties not less than 10 days prior to any hearing at which the results may be introduced into evidence. The person contesting the results of the blood or genetic marker tests has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure. If no objections are filed within the time and manner prescribed, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. The results of the blood or genetic marker tests shall have the following effect:

(1) If the court finds that the conclusion of all the experts, as disclosed by the evidence based upon the test, is that the probability of the alleged parent's parentage is less than eighty-five percent (85%), the alleged parent is presumed not to be the parent and the evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence;

(2) If the experts disagree in their findings or conclusions, the question of paternity shall be submitted upon all the evidence;

(3) If the tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is between eighty-five percent (85%) and ninety-seven percent (97%), this evidence shall be admitted by the court and shall be weighed with other competent evidence;

(4) If the experts conclude that the genetic tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher, the alleged parent is presumed to be the parent and this evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence.

Notes

See also G.S. 110-132.2 (administrative subpoena for genetic paternity testing).

The provisions of G.S. 8-50.1(b1) regarding the presumption of paternity based on genetic paternity test results were enacted in 1993 and apply to civil actions commenced on or after October 1, 1993. 1993 N.C. Sess. Laws ch. 333.

The provisions of G.S. 8-50.1(b1) regarding admission of genetic paternity test results based on verified documentary evidence regarding chain of custody were enacted in 1994 and apply to civil actions commenced on or after August 1, 1994. 1994 N.C. Sess. Laws ch. 733. They do not apply unless the genetic paternity test was ordered by a court pursuant to this section and therefore do not apply with respect to admission of results from a genetic paternity test that was conducted by consent of the parties without a court order. *See* Catawba County *ex rel.* Kenworthy v. Khatod, 125 N.C. App. 131, 479 S.E.2d 270 (1997). *See also* Rockingham County Dep't of Social Services *ex rel.* Shaffer v. Shaffer, 126 N.C. App. 197, 484 S.E.2d 415 (1997) (holding that genetic test results may not be admitted as evidence under this section based solely on *certified*, rather than *verified*, documentary evidence regarding the chain of custody of the genetic samples used in the test).

When the issue of paternity has already been litigated and adjudicated by a final judgment and the principles of res judicata or collateral estoppel prevent a party from relitigating the issue of paternity, paternity is no longer an issue in the case and a party may not request genetic paternity testing under this section. *See* Withrow v. Webb, 53 N.C. App. 67, 280 S.E.2d 22 (1981); State *ex rel.* Hill v. Manning, 110 N.C. App. 770, 431 S.E.2d 207 (1993).

An indigent putative father who requests a genetic paternity test under this section *may* have a constitutional right to obtain the test at the state's expense rather than having to advance the costs of the test as required by this section. *See* Little v. Streater, 452 U.S. 1 (1981).

This section does not authorize the trial court to order the husband of the child's mother to submit to a genetic paternity test unless the mother's husband denies paternity. *See* Johnson v. Johnson, 343 N.C. 114, 468 S.E.2d 59 (1996); *cf.* Jeffries v. Moore, 148 N.C. App. 364, 559 S.E.2d 217 (2002) (concurring opinion suggests that mother's husband may be required to submit to genetic paternity testing under G.S. 1A-1, Rule 35, if paternity testing is not allowed under G.S. 8-50.1(b1)). If, however, the mother's husband denies paternity of a child born during his marriage to the child's mother and genetic paternity testing under this section excludes him as the child's biological father, the genetic test results are sufficient to rebut the common law presumption of paternity in the context of an action against the husband seeking child support. *See* Wright v. Wright, 281 N.C. 159, 188 S.E.2d 317 (1972); Ambrose v. Ambrose, 140 N.C. App. 545, 536 S.E.2d 855 (2000); *cf.* Jones v. Patience, 121 N.C. App. 434, 466 S.E.2d 720 (1996) (in the context of a child custody proceeding, child's mother may not attempt to rebut common law presumption of husband's paternity of child born during marriage by requesting genetic paternity testing under this section).

An expert may testify with respect to the results of a genetic paternity test (if the results are otherwise admissible) even though he or she did not personally perform the test. *See* State v. Green, 55 N.C. App. 255, 284 S.E.2d 688 (1981). An expert may testify with respect to a genetic test's exclusion of the putative father as the child's father or to the statistical probability of paternity. *See* Cole v. Cole, 74 N.C. App. 247, 328 S.E.2d 446 (1985), *aff'd,* 314 N.C. 660, 335 S.E.2d 897 (1985). An expert, however, may not offer opinion testimony that the putative father is the child's biological father. *See* State *ex rel.* Williams v. Coppedge, 105 N.C. App. 470, 414 S.E.2d 81 (1992), *rev'd on other grounds*, 332 N.C. 654, 422 S.E.2d 691 (1992).

The presumption of paternity based on the results of a genetic paternity test may be rebutted by other evidence (including testimony of the putative father); the court's (or jury's) finding that the putative father is not the child's father will not be reversed on appeal absent abuse of discretion or complete lack of evidence. *See* Nash County Dep't of Social Services *ex rel.* Williams v. Beamon, 126 N.C. App. 536, 485 S.E.2d 851 (1997).

See Brown v. Smith, 137 N.C. App. 160, 526 S.E.2d 686 (2000) (upholding genetic paternity test results using 50 percent prior probability of paternity based on nongenetic factors).

G.S. 8-57. Husband and wife as witnesses in criminal actions.

* * *

(b) The spouse of the defendant shall be competent but not compellable to testify for the State against the defendant in any criminal action or grand jury proceedings, except that the spouse of the defendant shall be both competent and compellable to so testify:

* * *

(4) In a prosecution for abandonment of or failure to provide support for the other spouse or their child;

* * *

Notes

See also G.S. 14-322 through G.S. 14-325.1 and G.S. 49-2 through G.S. 49-9 (criminal nonsupport proceedings).

G.S. 8-57.2. Presumed father or mother as witnesses where paternity at issue.

Whenever an issue of paternity of a child born or conceived during a marriage arises in any civil or criminal proceeding, the presumed father or the mother of such child is competent to give evidence as to any relevant matter regarding paternity of the child, including nonaccess to the present or former spouse, regardless of any privilege which may otherwise apply. No parent offering such evidence shall thereafter be prosecuted based upon that evidence for any criminal act involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in this testimony.

Notes

A spouse's testimony regarding nonaccess between spouses at the time the child was conceived is competent and may be sufficient to rebut the presumption that the mother's husband is the child's father. *See* Wake County *ex rel*. Manning v. Green, 53 N.C. App. 26, 279 S.E.2d 901 (1981).

Chapter 14
Criminal Law

Article 40
Protection of the Family

G.S. 14-322. Abandonment and failure to support spouse and children.

* * *

(d) Any parent who shall willfully neglect or refuse to provide adequate support for that parent's child, whether natural or adopted, and whether or not the parent abandons the child, shall be guilty of a misdemeanor and upon conviction shall be punished according to subsection (f). Willful neglect or refusal to provide adequate support of a child shall constitute a continuing offense and shall not be barred by any statute of limitations until the youngest living child of the parent shall reach the age of 18 years.

(e) Upon conviction for an offense under this section, the court may make such order as will best provide for the support, as far as may be necessary, of the abandoned spouse or child, or both, from the property or labor of the defendant. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c). For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

(f) A first offense under this section is a Class 2 misdemeanor. A second or subsequent offense is a Class 1 misdemeanor.

Notes

See also G.S. 14-322.1; G.S. 14-325.1; G.S. 49-2 (criminal prosecution for willful failure to support illegitimate child); G.S. 15A-1343(b)(4) (child support payment required as condition of probation); North Carolina Child Support Guidelines.

The state must prove a defendant's willful failure to provide adequate support beyond a reasonable doubt. The defendant's paternity of the child is a necessary element of this offense; if the defendant denies that he is the child's father and his paternity has not previously been adjudicated by a final order that binds him under the principles of res judicata or collateral estoppel, he may request genetic paternity testing pursuant to G.S. 8-50.1(a).

Nonsupport is a continuing offense; a parent who has previously been convicted (or acquitted) of nonsupport may be prosecuted for his or her subsequent (or continued) failure to support his or her child. *See* Stephens v. Worley, 51 N.C. App. 553, 277 S.E.2d 81 (1981); State v. Johnson, 212 N.C. 566, 194 S.E. 319 (1937).

The maximum sentence (level III) for a Class 1 misdemeanor is 120 days and a fine (payable to the state for the benefit of the public schools); the maximum sentence (level III) for a Class 2 misdemeanor is sixty days and a fine of up to $1,000. *See* G.S. 15A-1340.23(c).

See also 18 U.S.C. § 228 (Federal Child Support Recovery Act) (making the willful failure to pay child support a federal crime if the obligor owes at least $5,000 in past-due child support (or one year's support) for a child who lives in another state or if the obligor travels from one state to another with the intent to evade a child support obligation of at least $5,000 (or one year's support)).

G.S. 14-322.1. Abandonment of child or children for six months.

Any man or woman who, without just cause or provocation, willfully abandons his or her child or children for six months and who willfully fails or refuses to provide adequate means of support for his or her child or children during the six months' period, and who attempts to conceal his or her whereabouts from his or her child or children with the intent of escaping his lawful obligation for the support of said child or children, shall be punished as a Class I felon.

Notes

See also G.S. 14-322, G.S. 14-322.3, and G.S. 14-325.1. The maximum (level VI) presumptive active sentence for a Class I felony is eight to ten months.

G.S. 14-322.3. Abandonment of an infant under seven days of age.

When a parent abandons an infant less than seven days of age by voluntarily delivering the infant as provided in G.S. 7B-500(b) or G.S. 7B-500(d) and does not express an intent to return for the infant, that parent shall not be prosecuted under G.S. 14-322 or G.S. 14-322.1.

Notes

See also G.S. 14-322 and G.S. 14-322.1. G.S. 14-322.3 applies only to acts committed on or after July 12, 2001.

G.S. 14-325.1. When offense of failure to support child deemed committed in State.

The offense of willful neglect or refusal of a parent to support and maintain a child, and the offense of willful neglect or refusal to support and maintain one's illegitimate child, shall be deemed to have been committed in the State of North Carolina whenever the child is living in North Carolina at the time of such willful neglect or refusal to support and maintain such child.

Chapter 15A
Criminal Procedure Act

Subchapter III
Criminal Process

Article 17
Criminal Process

G.S. 15A-305. Order for arrest.

(a) Definition. As used in this section, an order for arrest is an order issued by a justice, judge, clerk, or magistrate that a law-enforcement officer take a named person into custody.

(b) When Issued. An order for arrest may be issued when:

* * *

(2) A defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required.

(3) The defendant has failed to appear as required by a duly executed criminal summons issued pursuant to G.S. 15A-303 . . . .

(4) A defendant has violated the conditions of probation.

(5) In any criminal proceeding in which the defendant has become subject to the jurisdiction of the court, it becomes necessary to take the defendant into custody.

* * *

(7) The common-law writ of capias has heretofore been issuable.

(8) When a defendant fails to appear as required in a show cause order issued in a criminal proceeding.

(9) It is authorized by G.S. 5A-16 in connection with contempt proceedings.

* * *

Notes

See also G.S. 15A-534 (pre-trial release).

Under this section, an obligor in a child support case may be arrested if he or she (a) is charged with criminal nonsupport under G.S. 14-322, G.S. 14-322.1, or G.S. 49-2 and is not served with a criminal summons; (b) has been charged with criminal nonsupport and fails to appear at trial; (c) has been convicted of criminal nonsupport, has allegedly violated the conditions of his or her probation, and proceedings have been commenced to revoke his or her probation; (d) has been convicted of criminal nonsupport, has allegedly violated his or her probation, has been served with a show cause order for contempt, and fails to appear for the hearing; (e) has been charged with criminal contempt and the court has found probable cause, pursuant to G.S. 15A-16, that he or she will not appear; or (f) has been cited for civil contempt and fails to appear as required by a show cause order.

Subchapter V
Custody

Article 26
Bail

G.S. 15A-531. Definitions.

* * *

(4) "Bail bond" means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount. . . . Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.

Notes

See also G.S. 15A-534.

An obligor who is arrested in connection with a child support proceeding may be released from custody if he or she posts an *appearance* bond. An appearance bond is *not* a compliance bond. An appearance bond must be returned to the person who posted it if the obligor appears as required and may be forfeited to the state for the benefit of the public schools if the obligor fails to appear. *See* G.S. 15A-544. Unlike a compliance bond, an appearance bond may not be forfeited to the obligee to satisfy unpaid child support arrearages if the obligor fails to appear. *See* Mussallam v. Mussallam, 321 N.C. 504, 364 S.E.2d 364 (1988) (discussing distinction between appearance bond and compliance bond in contempt proceeding relating to civil action for child custody).

Subchapter XIII
Disposition of Defendants

Article 82
Probation

G.S. 15A-1343. Conditions of probation.

* * *

(b) Regular Conditions. — As regular conditions of probation, a defendant must:

* * *

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

* * *

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

* * *

Notes

Payment of child support may be imposed as a condition of probation in a criminal nonsupport proceeding under G.S. 14-322(d), G.S. 14-322.1, or G.S. 49-2 or in criminal contempt proceedings involving nonpayment of court-ordered child support if the defendant-parent is convicted and receives a suspended sentence. If the defendant-parent fails to pay child support as required by the conditions of probation, the court may enforce the defendant-parent's child support obligation through income withholding pursuant to G.S. 15A-1344.1, by contempt as authorized by G.S. 15A-1344(e1), or by revoking probation pursuant to G.S. 15A-1344 and G.S. 15A-1345.

G.S. 15A-1344.1. Procedure to insure payment of child support.

(a) When the court requires, as a condition of supervised or unsupervised probation, that a defendant support his children, the court may order at any time that support payments be made to the State Child Support Collection and Disbursement Unit for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) apply. If child support is to be paid through income withholding, the payments shall be made in accordance with G.S. 110-139(f).

(b) After entry of such an order by the court, the clerk of court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(c) The parties affected by the order shall inform the clerk of court and the State Child Support Collection and Disbursement Unit of any change of address or of other condition that may affect the administration of the order. The court may provide in the order that a defendant failing to inform the court and the State Child Support Collection and Disbursement Unit of a change of address within reasonable period of time may be held in violation of probation.

(d) When a defendant in a non-IV-D case, as defined in G.S. 110-129, fails to make required payments of child support and is in arrears, upon notification by the State Child Support Collection and Disbursement Unit the clerk of superior court may mail by regular mail to the last known address of the defendant a notice of delinquency that sets out the amount of child support currently due and that demands immediate payment of the amount. Failure to receive the delinquency notice is not a defense in any probation violation hearing or other proceeding thereafter. If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or is not paid within 30 days after the defendant becomes delinquent if the clerk has elected not to send a delinquency notice, the clerk shall certify the amount due to the district attorney and probation officer, who shall initiate proceedings for revocation of probation pursuant to Article 82 of Chapter 15A or make a motion in the criminal case for income withholding pursuant to G.S. 110-136.5 or both.

When a defendant in a IV-D case, as defined in G.S. 110-129, fails to make required payments of child support and is in arrears, at the request of the IV-D obligee the clerk shall certify the amount due to the district attorney and probation officer, who shall initiate proceedings for revocation of probation pursuant to Article 82 of Chapter 15A or make a motion in the criminal case for income withholding pursuant to G.S. 110-136.5 or both.

Notes

See also G.S. 15A-1344 and G.S. 15A-1345 (revocation of probation); G.S. 110-136.5; G.S. 110-139(f).

Chapter 15B
Victims Compensation

G.S. 15B-17. Award not subject to taxation or execution.

* * *

(b) An award is not subject to execution, attachment, garnishment, or other process, except that, upon receipt of an award by a claimant, . . . the part of the award that is for work loss is not exempt from such an action to secure payment of alimony, maintenance, or child support.

Chapter 20
Motor Vehicles

Article 2
Uniform Driver's License Act

G.S. 20-7. Issuance and renewal of drivers licenses.

* * *

(b2) Disclosure of Social Security Number. — . . . In accordance with . . . 42 U.S.C. 666, and amendments thereto, the Division [of Motor Vehicles] may disclose a social security number obtained under subsection (b1) of this section only as follows:

* * *

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of establishing paternity or child support or enforcing a child support order.

* * *

G.S. 20-15.1. Revocations when licensing privileges forfeited.

The Division shall revoke the license of a person whose licensing privileges have been forfeited under G.S. 15A-1331A, 50-13.12, and 110-142.2. If a revocation period set by this Chapter is longer than the revocation period resulting from the forfeiture of licensing privileges, the revocation period in this Chapter applies.

Notes

See also G.S. 50-13.12 and G.S. 110-142.2 (revocation of driver's license for failure to pay child support).

G.S. 20-17. Mandatory revocation of license by Division.

* * *

(b) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division shall:

(1) Ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obligor who is delinquent in making child support payments when a court of record has issued a revocation order pursuant to G.S. 110-142.2 or G.S. 50-13.12. The obligor shall not be entitled to any other hearing before the Division as a result of the revocation of his license pursuant to G.S. 110-142.2 or G.S. 50-13.12; or

* * *

Notes

See also G.S. 50-13.12 and G.S. 110-142.2 (revocation of driver's license for failure to pay child support).

G.S. 20-24. When court or child support enforcement agency to forward license to Division and report convictions, child support delinquencies, and prayers for judgment continued.

(a) License. A court that . . . revokes a person's drivers license pursuant to G.S. 50-13.12 shall require the person to give the court any regular or commercial drivers license issued to that person. . . .

The clerk of court in a non-IV-D case, and the child support enforcement agency in a IV-D case, shall accept a drivers license required to be given to the court under this subsection. A clerk of court or the child support enforcement agency who receives a drivers license shall give the person whose license is received a copy of a dated receipt for the license. The receipt must be on a form approved by the Commissioner. A revocation or disqualification for which a license is received under this subsection is effective as of the date on the receipt for the license.

The clerk of court or the child support enforcement agency shall notify the Division of a license received under this subsection either by forwarding to the Division the license, a record of the conviction for which the license was received, a copy of the court order revoking the license for failure to pay child support for which the license was received, and the original dated receipt for the license or by electronically sending to the Division the information on the license, the record of conviction or court order revoking the license for failure to pay child support, and the receipt given for the license. The clerk of court or the child support enforcement agency must forward the required items unless the Commissioner has given the clerk of court or the child support enforcement agency approval to notify the Division electronically. If the clerk of court or the child support enforcement agency notifies the Division electronically, the clerk of court or the child support enforcement agency must destroy a license received after sending to the Division the required information. The clerk of court or the child support enforcement agency shall notify the Division within 30 days after entry of the conviction or court order revoking the license for failure to pay child support for which the license was received.

(b) Convictions, Court Orders of Drivers License Revocations, and PJCs. The clerk of court shall send the Division a record of any of the following:

* * *

(4a) A court order revoking drivers license pursuant to G.S. 50-13.12.

* * *

The child support enforcement agency shall send the Division a record of any court order revoking drivers license pursuant to G.S. 110-142.2(a)(1).

With the approval of the Commissioner, the clerk of court or the child support enforcement agency may forward a record of conviction, court order revoking drivers license, or prayer for judgment continued to the Division by electronic data processing means.

* * *

Notes

See also G.S. 50-13.12 and G.S. 110-142.2 (revocation of drivers license for failure to pay child support).

G.S. 20-24.1. Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.

* * *

(c) If the person satisfies the conditions of subsection (b) that are applicable to his case before the effective date of the revocation order, the revocation order and any entries on his driving record relating to it shall be deleted and the person does not have to pay the restoration fee set by G.S. 20-7(i1). For all other revocation orders issued pursuant to this section, G.S. 50-13.12 or G.S. 110-142.2, the person must pay the restoration fee and satisfy any other applicable requirements of this Article before the person may be relicensed.

* * *

Notes

See also G.S. 50-13.12 and G.S. 110-142.2 (revocation of drivers license for failure to pay child support).

G.S. 20-28. Unlawful to drive while license revoked or while disqualified.

* * *

(a1) Driving Without Reclaiming License. A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

* * *

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

* * *

Notes

See also G.S. 50-13.12 and G.S. 110-142.2 (revocation of drivers license for failure to pay child support).

Article 3
Motor Vehicles Act of 1937

G.S. 20-50.4. Division to refuse to register vehicles on which taxes are delinquent and when there is a failure to meet court-ordered child support obligations.

* * *

(b) Delinquent Child Support Obligations. — Upon receiving a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed, the Division shall refuse to register a vehicle for the owner named in the report until the Division receives certification pursuant to G.S. 110-142.2 that the payments are no longer considered delinquent.

Notes

See also G.S. 110-142.2 (revocation of motor vehicle registration for failure to pay child support).

G.S. 20-179.3. Limited driving privilege.

* * *

(k) Copy of Limited Driving Privilege to Division; Action Taken if Privilege Invalid. — The clerk of court or the child support enforcement agency must send a copy of any limited driving

privilege issued in the county to the Division. A limited driving privilege that is not authorized by . . . G.S. . . . 50-13.12 . . . or 110-142.2, or that does not contain the limitations required by law, is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege.

* * *

Notes

See also G.S. 50-13.12 and G.S. 110-142.2 (revocation of drivers license for failure to pay child support).

Chapter 24
Interest

Article 1
General Provisions

G.S. 24-5. Interest on judgments.

* * *

(b) Other Actions. — In an action other than contract, any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied. Any other portion of a money judgment in an action other than contract, except the costs, bears interest from the date of entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate.

Notes

See also G.S. 50-13.4(f)(8) and G.S. 50-13.10 (judgments for past-due child support).

The legal rate of interest is 8 percent per annum. *See* G.S. 24-1. If interest accrues on a judgment for child support arrearages, payments by the obligor should be credited first to interest and then to the principal amount of the judgment. *See* Morley v. Morley, 102 N.C. App. 713, 403 S.E.2d 574 (1991).

Pre-judgment interest may be awarded on child support accruing between the date the complaint is filed and the date the order is entered. *See* Taylor v. Taylor, 128 N.C. App. 180, 493 S.E.2d 819 (1997).

Chapter 39
Conveyances

Article 3A
Uniform Fraudulent Transfer Act

* * *

Notes

The statutory provisions of G.S. Ch. 39, Art. 3A (G.S. 39-23.1 through G.S. 39-23.12) regarding fraudulent transfers of property by debtors for the purpose of defeating or hindering the

valid claims of creditors apply with respect to fraudulent transfers of property by obligors who are liable for child support or owe past-due child support arrearages. *See* G.S. 50-13.4(f)(7).

Chapter 44
Liens

Article 15
Liens for Overdue Child Support

G.S. 44-86. Lien on real and personal property of person owing past-due child support; definitions; filing required; discharge.

(a) Definitions. — As used in this Article, the terms "designated representative", "obligee", and "obligor" have the meanings given them in G.S. 110-129.

(b) Lien Created. — There is created a general lien upon the real and personal property of any person who is delinquent in the payment of court-ordered child support. For purposes of this section, an obligor is delinquent when arrears under a court-ordered child support obligation equals three months of payments or three thousand dollars ($3,000), whichever occurs first. The amount of the lien shall be determined by a verified statement of child support delinquency prepared in accordance with subsection (c) of this section.

(c) Contents of Statement; Verification. — A verified statement of child support delinquency shall contain the following information:

(1) The caption and file docket number of the case in which child support was ordered;
(2) The date of the order of support;
(3) The amount of the child support obligation established by the order; and
(4) The amount of the arrearage as of the date of the statement.

The statement shall be verified by the designated representative in a IV-D case and by the obligee in a non-IV-D case.

(d) Filing and Perfection of Lien. — The verified statement shall be filed in the office of the clerk of superior court in the county in which the child support was ordered. At the time of filing the verified statement, the designated representative in a IV-D case and the obligee in a non-IV-D case shall serve notice on the obligor that the statement has been filed. The notice shall be served and the return of service filed with the clerk of court in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall specify the manners in which the lien may be discharged. Upon perfection of the lien, as set forth herein, the clerk shall docket and index the statement on the judgment docket. The clerk shall issue a transcript of the docketed statement to the clerk of any other county as requested by the designated representative in a IV-D case or the obligee in a non-IV-D case. The clerk receiving the transcript shall docket and index the transcript. A lien on personal property attaches when the property is seized by the sheriff. A lien on real property attaches when the perfected lien is docketed and indexed on the judgment docket.

(1) IV-D Cases. — In IV-D cases, the filing of a verified statement with the clerk of court by the designated representative shall perfect the lien. The obligor may contest the lien by motion in the cause.
(2) Non-IV-D Cases. — In a non-IV-D case, the notice to the obligor of the filing of the verified statement shall state that the obligor has 30 days from the date of service to request a hearing before a district court judge to contest the validity of the lien. If the obligor fails to contest the lien after 30 days from the time of service, the obligee may make application to the clerk, and the clerk shall record and index the lien on the judgment docket. If the obligee files a petition contesting the validity of the lien, a hearing shall be held before a district court judge to determine whether the lien is valid and proper. In contested cases, the clerk of court shall record and index the lien

on the judgment docket only by order of the judge. The docketing of a verified statement in a non-IV-D case shall perfect the lien when duly recorded and indexed.

(e) Lien Superior to Subsequent Liens. — Except as otherwise provided by law, a lien established in accordance with this section shall take priority over all other liens subsequently acquired and shall continue from the date of filing until discharged in accordance with G.S. 44-87.

(f) Execution on the Lien. — A designated representative in a IV-D case, after 30 days from the docketing of the perfected lien, or an obligee in a non-IV-D case, after docketing the perfected lien, may enforce the lien in the same manner as for a civil judgment.

(g) Liens Arising Out-of-State. — This State shall accord full faith and credit to child support liens arising in another state when the child support enforcement agency, party, or other entity seeking to enforce the lien complies with the requirements relating to recording and serving child support liens as set forth in this Article and with the requirements relating to the enforcement of foreign judgments as set forth in Chapter 1C of the General Statutes.

Notes

See also G.S. Ch. 1, Arts. 28 and 31 (execution of judgments); G.S. 1C-1701 (Uniform Enforcement of Foreign Judgments Act); G.S. 58-3-185 (child support lien on payment of insurance benefits or claims).

G.S. 44-86 and 44-87 were enacted by S.L. 1997-433 and became effective October 1, 1997. *See also* 42 U.S.C. § 666(a)(4) (requiring North Carolina and other states to enact laws or procedures under which liens for child support arrearages arise by operation of law). Although the procedures for establishing a lien for child support arrearages under G.S. 44-86 are different from the procedures for obtaining a judgment for child support arrearages under G.S. 50-13.4(f)(8), a perfected lien for child support arrearages under G.S. 44-86 is substantially identical to a judgment for child support arrearages under G.S. 50-13.4(f)(8).

A child support lien that arises under the law of a sister state applies only to real and personal property that is located within, or is subject to the jurisdiction of, that state and does not apply to real or personal property located in, or subject to the jurisdiction of, other states. *See* Hawley v. Murphy, 736 A.2d 268 (Me. 1999)

G.S. 44-87. Discharge of lien; penalty for failure to discharge.

(a) Liens created by this Article may be discharged as follows:

(1) By the designated representative in IV-D cases, or by the obligee in non-IV-D cases, filing with the clerk of superior court an acknowledgment that the obligor has satisfied the full amount of the lien;

(2) By depositing with the clerk of superior court money equal to the amount of the claim and filing a petition in the cause requesting a district court judge to determine the validity of the lien. The money shall not be disbursed except by order of a district court judge following the hearing on the merits; or

(3) By an entry in the judgment docket book that the action on the part of the lien claimant to enforce the lien has been dismissed, or a judgment has been rendered against the claimant in such action.

(b) An obligee in a non-IV-D case who has received payment in full for a delinquent child support obligation which is the basis for the lien shall, within 30 days of receipt of payment, file with the clerk of court an acknowledgment that the obligor has satisfied the full amount of the lien and that the lien is discharged. If the lienholder fails to timely file the acknowledgment, the obligor may, after serving notice on the obligee, file an action in district court to discharge the lien. If in an action filed by the obligor to discharge the lien, the court discharges the lien and finds that the obligee failed to timely file an acknowledgment discharging the lien, then the court may allow the prevailing party to recover reasonable attorneys' fees to be taxed as court costs against the obligee.

Notes

G.S. 44-86 and 44-87 were enacted by S.L. 1997-433 and became effective October 1, 1997. *See also* 42 U.S.C. § 666(a)(4) (requiring North Carolina and other states to enact laws or procedures under which liens for child support arrearages arise by operation of law).

Chapter 48
Adoptions

Article 1
General Provisions

G.S. 48-1-106. Legal effect of decree of adoption.

* * *

(c) A decree of adoption severs the relationship of parent and child between the individual adopted and that individual's biological or previous adoptive parents. After the entry of a decree of adoption, the former parents are relieved of all legal duties and obligations due from them to the adoptee, except that a former parent's duty to make past-due payments for child support is not terminated, and the former parents are divested of all rights with respect to the adoptee.

* * *

Notes

See also G.S. 48-1-107, G.S. 48-3-607, G.S. 48-3-705, and G.S. 48-10-102.

See State *ex rel.* Pruitt v. Pruitt, 94 N.C. App. 713, 380 S.E.2d 809 (1989) (child's father was liable for child support arrearages that accrued before child's adoption by mother's new spouse).

See State *ex rel.* Raines v. Gilbert, 117 N.C. App. 129, 450 S.E.2d 1 (1994) (parent's agreement to release obligor-parent from his child support obligation in return for his consent to allow adoption of minor child by parent's new spouse is void and unenforceable because it is contrary to public policy and violates North Carolina's laws regulating adoption of minor children); G.S. 48-10-102.

G.S. 48-1-107. Other rights of adoptee.

A decree of adoption does not divest any vested property interest owned by the adoptee immediately prior to the decree of adoption including any public assistance benefit or child support payment due on or before the date of the decree. An adoption divests any property interest, entitlement, or other interest contingent on an ongoing family relationship with the adoptee's former family.

Notes

See also G.S. 48-1-106; State *ex rel.* Pruitt v. Pruitt, 94 N.C. App. 713, 380 S.E.2d 809 (1989).

Article 3
Adoption of Minors

G.S. 48-3-607. Consequences of consent.

* * *

(c) Any other parental right and duty of a parent who executed a consent is not terminated until either the decree of adoption becomes final or the relationship of parent and child is otherwise terminated, whichever comes first. Until termination, the minor remains the child of a parent who executed a consent for purposes of any inheritance, succession, insurance, arrears of

child support, and other benefit or claim that the minor may have from, through, or against the parent.

Notes

See Stanly County Dep't of Social Services *ex rel*. Dennis v. Reeder, 127 N.C. App. 723, 493 S.E.2d 70 (1997) (obligor-parent's consent to adoption of minor child by other parent's new spouse does not terminate his duty to continue providing support to minor child until final decree of adoption is entered); G.S. 48-1-106.

G.S. 48-3-705. Consequences of relinquishment.

* * *

(d) Except as provided in subsection (c) of this section, parental rights and duties of a parent who executed a relinquishment are not terminated until the decree of adoption becomes final or the parental relationship is otherwise legally terminated, whichever occurs first. Until termination the minor remains the child of a parent who executed a relinquishment for purposes of any inheritance, succession, insurance, arrears of child support, and other benefit or claim that the minor may have from, through, or against the parent.

Notes

See Stanly County Dep't of Social Services *ex rel*. Dennis v. Reeder, 127 N.C. App. 723, 493 S.E.2d 70 (1997) (obligor-parent's consent to adoption of minor child by other parent's new spouse does not terminate his duty to continue providing support to minor child until final decree of adoption is entered); G.S. 48-1-106.

Article 4
Adoption of a Minor Stepchild by Stepparent

G.S. 48-4-103. Execution and content of consent to adoption by stepparent.

(a) A consent executed by a parent who is the stepparent's spouse:

* * *

(2) Must be in writing and state or contain:

* * *

d. That the adoption will terminate the legal relation of parent and child between the adoptee and the adoptee's other parent, including all right of the adoptee to inherit as a child from or through the other parent, and will extinguish any existing court order of custody, visitation, or communication with the adoptee, except that the other parent will remain liable for past-due child support payments unless legally released from this obligation.

(b) A consent executed by a minor stepchild's parent who is not the stepparent's spouse:

* * *

(2) Must be in writing and state or contain:

* * *

c. That the adoption will terminate the legal relation of parent and child between the adoptee and the parent executing the consent, including all rights of the adoptee to inherit as a child from or through the parent, and will extinguish any court order of custody, visitation, or communication with the adoptee, except that the parent executing the consent will remain liable for past-due child support payments unless legally released from this obligation.

(c) A consent executed by the guardian of a minor stepchild:

* * *

(2) Must be in writing and state or contain:

* * *

d. That the adoption will terminate the legal relation of parent and child between the adoptee and a parent who is not or has not been the stepparent's spouse, including all right of the adoptee to inherit from or through that parent, and will extinguish any court order of custody, visitation, or communication with the adoptee, except that a parent whose relation to the adoptee is terminated by the adoption will remain liable for past-due child support payments unless legally released from this obligation.

Notes

See also G.S. 48-2-305(9) (filing agreements to release past-due child support payments with petition to adopt stepchild).

Chapter 48A
Minors

Article 1
Age of Majority

G.S. 48A-1. Common-law definition of "minor" abrogated.

The common-law definition of minor insofar as it pertains to the age of the minor is hereby repealed and abrogated.

G.S. 48A-2. Age of minors.

A minor is any person who has not reached the age of 18 years.

Notes

See also G.S. Ch. 7B, Art. 35 regarding emancipation of minors.

Unless a parent enters into a binding contract or agreement to continue supporting his or her child after the child is emancipated or reaches the age of eighteen, or the parent has been ordered, pursuant to G.S. 50-13.4(c), to continue providing support for a child between the ages of eighteen and twenty who is still in elementary or secondary school, the parent has no legal obligation to support an emancipated minor child or a child who is eighteen years of age or older. *See* Bridges v. Bridges, 85 N.C. App. 524, 355 S.E.2d 230 (1987); Appelbe v. Appelbe, 75 N.C. App. 197, 330 S.E.2d 57 (1985). The provisions of G.S. 50-13.8 that formerly required parents to support their adult, disabled children were repealed in 1979. *See* 1979 N.C. Sess. Laws ch. 838, sec. 29; Jackson v. Jackson, 102 N.C. App. 574, 402 S.E.2d 869 (1991).

Chapter 49
Bastardy

Article 1
Support of Illegitimate Children

G.S. 49-1. Title.

This Article shall be referred to as "An act concerning the support of children of parents not married to each other."

G.S. 49-2. Nonsupport of illegitimate child by parents made misdemeanor.

Any parent who willfully neglects or who refuses to provide adequate support and maintain his or her illegitimate child shall be guilty of a Class 2 misdemeanor. A child within the meaning of this Article shall be any person less than 18 years of age and any person whom either parent might be required under the laws of North Carolina to support and maintain if such child were the legitimate child of such parent.

Notes

See also G.S. 14-322 and G.S. 14.322.1 (criminal nonsupport of legitimate children); G.S. 49-7.

The state must prove a defendant's paternity *and* willful failure to provide adequate support beyond a reasonable doubt. *See* State v. Spillman, 210 N.C. 271, 186 S.E. 322 (1936); State v. Robinson, 236 N.C. 408, 72 S.E.2d 857 (1952), 245 N.C. 10, 95 S.E.2d 126 (1956); State v. Ellis, 262 N.C. 446, 137 S.E.2d 840 (1964); State v. Coffey, 3 N.C. App. 133, 164 S.E.2d 39 (1968).

Nonsupport is a continuing offense; a parent who has previously been convicted (or acquitted) of nonsupport may be prosecuted for his or her subsequent (or continued) failure to support his or her child. *See* State v. Johnson, 212 N.C. 566, 194 S.E. 319 (1937); State v. Coffey, 3 N.C. App. 133, 164 S.E.2d 39 (1968); State v. Killian, 61 N.C. App. 155, 300 S.E.2d 257 (1983). The child's death does not prevent the state from prosecuting the child's parent under this section for failing to support the child before the child's death. *See* State v. Fowler, 277 N.C. 305, 177 S.E.2d 385 (1970).

The maximum sentence (level III) for a Class 2 misdemeanor is sixty days and a fine of up to $1,000. *See* G.S. 15A-1340.23(c).

See also 18 U.S.C. § 228 (Federal Child Support Recovery Act) (making the willful failure to pay child support a federal crime if the obligor owes at least $5,000 in past-due child support (or one year's support) for a child who lives in another state or if the obligor travels from one state to another with the intent to evade a child support obligation of at least $5,000 (or one year's support)).

G.S. 49-3. Place of birth of child no consideration.

The provisions of this Article shall apply whether such child shall have been begotten or shall have been born within or without the State of North Carolina: Provided, that the child to be supported is a bona fide resident of this State at the time of the institution of any proceedings under this Article.

G.S. 49-4. When prosecution may be commenced.

The prosecution of the reputed father of an illegitimate child may be instituted under this Chapter within any of the following periods, and not thereafter:

(1) Three years next after the birth of the child; or
(2) Where the paternity of the child has been judicially determined within three years next after its birth, at any time before the child attains the age of 18 years; or
(3) Where the reputed father has acknowledged paternity of the child by payments for the support thereof within three years next after the birth of such child, three years from the date of the last payment whether such last payment was made within three years of the birth of such child or thereafter: Provided, the action is instituted before the child attains the age of 18 years.

The prosecution of the mother of an illegitimate child may be instituted under this Chapter at any time before the child attains the age of 18 years.

Notes

The statute of limitations under this section is not unconstitutional. *See* State v. Beasley, 57 N.C. App. 208, 290 S.E.2d 730 (1982).

G.S. 49-5. Prosecution; death of mother no bar; determination of fatherhood.

Proceedings under this Article may be brought by the mother or her personal representative or, if the child is likely to become a public charge, the director of social services or such person as by law performs the duties of such official in said county where the mother resides or the child is found. Proceedings under this Article may be brought in the county where the mother resides or is found, or in the county where the putative father resides or is found, or in the county where the child is found. The fact that the child was born outside of the State of North Carolina shall not be a bar to proceedings against the putative father in any county where he resides or is found, or in the county where the mother resides or the child is found. The death of the mother shall in no wise affect any proceedings under this Article. Preliminary proceedings under this Article to determine the paternity of the child may be instituted prior to the birth of the child but when the judge or court trying the issue of paternity deems it proper, he may continue the case until the woman is delivered of the child. When a continuance is granted, the courts shall recognize the person accused of being the father of the child with surety for his appearance, either at the next session of the court or at a time to be fixed by the judge or court granting a continuance, which shall be after the delivery of the child.

Notes

The bond authorized by this section is an appearance bond, not a compliance bond.

G.S. 49-6. Mother not excused on ground of self-incrimination; not subject to penalty.

No mother of an illegitimate child shall be excused, on the ground that it may tend to incriminate her or subject her to a penalty or a forfeiture, from attending and testifying, in obedience to a subpoena of any court, in any suit or proceeding based upon or growing out of the provisions of this Article, but no such mother shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, she may so testify.

G.S. 49-7. Issues and orders.

The court before which the matter may be brought shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has been determined in the affirmative, the court shall proceed to determine the issue as to whether or not the defendant has neglected or refused to provide adequate support and maintain the child who is the subject of the proceeding. After this matter shall have been determined in the affirmative, the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the child, subject to the limitations of G.S. 50-13.10. The amount of child support shall be determined as provided in G.S. 50-13.4(c). The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court. The social security number, if known, of the minor child's parents shall be placed in the record of the proceeding. Compliance by the defendant with any or all of the further provisions of this Article or the order or orders of the court requiring additional acts to be performed by the defendant shall not be construed to relieve the defendant of his or her responsibility to pay the sum fixed or any modification or increase thereof.

The court before whom the matter may be brought, on motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to

any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist or other duly qualified person. The evidentiary effect of those blood tests and comparisons and the manner in which the expenses therefor are to be taxed as costs shall be as prescribed in G.S. 8-50.1. In addition, if a jury tries the issue of parentage, they shall be instructed as set out in G.S. 8-50.1. From a finding on the issue of parentage against the alleged-parent defendant, the alleged-parent defendant has the same right of appeal as though he or she had been found guilty of the crime of willful failure to support an illegitimate child.

Notes

See also G.S. 8-50.1 (genetic paternity testing); G.S. 50-13.7 and G.S. 50-13.10 (modification of child support orders); North Carolina Child Support Guidelines. *See also* G.S.130A-118 and G.S. 130A-119 (issuance of amended birth certificate following judgment establishing paternity of illegitimate child).

Paternity is a necessary element of criminal nonsupport of an illegitimate child and must be established beyond a reasonable doubt. *See* Tidwell v. Booker, 290 N.C. 98, 225 S.E.2d 816 (1976); State v. Robinson, 245 N.C. 10, 95 S.E.2d 126 (1956). If the defendant's paternity has been established in a prior criminal nonsupport proceeding involving the child, that finding of paternity is res judicata on the issue of paternity in a subsequent criminal proceeding involving the defendant's failure to support the child. *See* State v. Ellis, 262 N.C. 446, 137 S.E.2d 840 (1964). If the defendant denies that he is the child's father and his paternity has not previously been adjudicated by a final order that binds him under the principles of res judicata or collateral estoppel, he may request genetic paternity testing pursuant to G.S. 8-50.1(a). *See* State v. Fowler, 277 N.C. 305, 177 S.E.2d 385 (1970). The defendant may appeal the court's determination of paternity even if he is acquitted of nonsupport. *See* State v. Clement, 230 N.C. 614, 54 S.E.2d 919 (1949).

A court is required, under G.S. 49-7 and G.S. 49-8, to enter an order requiring a parent convicted of criminal nonsupport to support his or her child (unless the parent is already subject to a child support order with respect to the child). A child support order entered pursuant to G.S. 49-7 and G.S. 49-8 imposes an enforceable legal child support obligation that is in addition to, and not in lieu of, the defendant's criminal conviction, sentence, and conditions of probation.

G.S. 49-8. Power of court to modify orders, suspend sentence, etc.

Upon the determination of the issues set out in G.S. 49-7 and for the purpose of enforcing the payment of the sum fixed, the court is hereby given discretion, having regard for the circumstances of the case and the financial ability and earning capacity of the defendant and his or her willingness to cooperate, to make an order or orders upon the defendant and to modify such order or orders from time to time as the circumstances of the case may in the judgment of the court require subject to the limitations of G.S. 50-13.10. The order or orders made in this regard may include any or all of the following alternatives:

(1) [Repealed]
(2) Suspend sentence and continue the case from term to term;
(3) Release the defendant from custody on probation conditioned upon the defendant's compliance with the terms of the probation and the payment of the sum fixed for the support and maintenance of the child;

(4) Order the defendant to pay to the mother of the said child the necessary expenses of birth of the child and suitable medical attention for her;
(5) Require the defendant to sign a recognizance with good and sufficient security, for compliance with any order which the court may make in proceedings under this Article.

Notes

See also G.S. 49-2 and G.S. 49-7; G.S. 15A-1343 (probation); G.S. 50-13.7 and G.S. 50-13.10 (modification of child support orders). The bond authorized by this section is a compliance bond, not an appearance bond.

A court is required, under G.S. 49-7 and G.S. 49-8, to enter an order requiring a parent convicted of criminal nonsupport to support his or her child (unless the parent is already subject to a child support order with respect to the child). A child support order entered pursuant to G.S. 49-7 and G.S. 49-8 imposes an enforceable legal child support obligation that is in addition to, and not in lieu of, the defendant's criminal conviction, sentence, and conditions of probation.

G.S. 49-9. Bond for future appearance of defendant.

At the preliminary hearing of any case arising under this Article it shall be the duty of the court, if it finds reasonable cause for holding the accused for a further hearing, to require a bond in the sum of not less than one hundred dollars ($100.00), conditioned upon the reappearance of the accused at the further hearing under this Article. This bond and all other bonds provided for in this Article shall be justified before, and approved by, the court or the clerk thereof.

Notes

The bond authorized by this section is an appearance bond, not a compliance bond. *See* G.S. 15A-531, G.S. 15A-534, G.S. 15A-544.

Article 2
Legitimation of Illegitimate Children

G.S. 49-10. Legitimation.

The putative father of any child born out of wedlock, whether such father resides in North Carolina or not, may apply by a verified written petition, filed in a special proceeding in the superior court of the county in which the putative father resides or in the superior court of the county in which the child resides, praying that such child be declared legitimate. The mother, if living, and the child shall be necessary parties to the proceeding, and the full names of the father, mother and the child shall be set out in the petition. A certified copy of a certificate of birth of the child shall be attached to the petition. If it appears to the court that the petitioner is the father of the child, the court may thereupon declare and pronounce the child legitimated; and the full names of the father, mother and the child shall be set out in the court order decreeing legitimation of the child. The clerk of the court shall record the order in the record of orders and decrees and it shall be cross-indexed under the name of the father as plaintiff or petitioner on the plaintiff's side of the cross-index, and under the name of the mother, and the child as defendants or respondents on the defendants' side of the cross-index.

Notes

See also G.S. 49-12 (legitimation by subsequent marriage) and G.S. 49-12.1 (legitimation of child born to married woman).

Legitimation proceedings are special proceedings before the clerk of superior court. *See* G.S. 1-393 through G.S. 1-408.1 (special proceedings). The putative father of an illegitimate

child is the only person who has standing to commence a legitimation proceeding under this section. A guardian ad litem should be appointed for a minor child who is a party to a legitimation proceeding. *See* G.S. 1A-1, Rule 17.

G.S. 49-11. Effects of legitimation.

The effect of legitimation under G.S. 49-10 shall be to impose upon the father and mother all of the lawful parental privileges and rights, as well as all of the obligations which parents owe to their lawful issue, and to the same extent as if said child had been born in wedlock, and to entitle such child by succession, inheritance or distribution, to take real and personal property by, through, and from his or her father and mother as if such child had been born in lawful wedlock. In case of death and intestacy, the real and personal estate of such child shall descend and be distributed according to the Intestate Succession Act as if he had been born in lawful wedlock.

Notes

See also G.S. 49-13, G.S. 130A-118 and G.S. 130A-119 (issuance of amended birth certificate following legitimation of illegitimate child).

After a decree legitimizing an illegitimate child, the child's parents are responsible for supporting the child in accordance with G.S. 50-13.4.

G.S. 49-12. Legitimation by subsequent marriage.

When the mother of any child born out of wedlock and the reputed father of such child shall intermarry or shall have intermarried at any time after the birth of such child, the child shall, in all respects after such intermarriage be deemed and held to be legitimate and the child shall be entitled, by succession, inheritance or distribution, to real and personal property by, through, and from his father and mother as if such child had been born in lawful wedlock. In case of death and intestacy, the real and personal estate of such child shall descend and be distributed according to the Intestate Succession Act as if he had been born in lawful wedlock.

Notes

See also G.S. 49-13, G.S. 130A-118 and 130A-119 (issuance of amended birth certificate following legitimation of illegitimate child).

The "reputed" father of an illegitimate child is the person who is considered, by the parties or public reputation, to be the child's father. *See* Bowman v. Howard, 182 N.C. 662, 110 S.E. 98 (1921); Carter v. Carter, 232 N.C. 614, 61 S.E.2d 711 (1950); Chambers v. Chambers, 43 N.C. App. 361, 258 S.E.2d 822 (1979). *See also* Myers v. Myers, 39 N.C. App. 201, 249 S.E.2d 853 (1979).

G.S. 49-12.1. Legitimation when mother married.

(a) The putative father of a child born to a mother who is married to another man may file a special proceeding to legitimate the child. The procedures shall be the same as those specified by G.S. 49-10, except that the spouse of the mother of the child shall be a necessary party to the proceeding and shall be properly served. A guardian ad litem shall be appointed to represent the child if the child is a minor.

(b) The presumption of legitimacy can be overcome by clear and convincing evidence.

(c) The parties may enter a consent order with the approval of the clerk of superior court. The order entered by the clerk shall find the facts and declare the proper person the father of the child and may change the surname of the child.

(d) The effect of legitimation under this section shall be the same as provided by G.S. 49-11.

(e) A certified copy of the order of legitimation under this section shall be sent by the clerk of superior court under his official seal to the State Registrar of Vital Statistics who shall make a

new birth certificate bearing the full name of the father of the child and, if ordered by the clerk, changing the surname of the child.

Notes

See also G.S. 49-10 and 49-11; G.S. 49-13, G.S. 130A-118 and G.S. 130A-119 (issuance of amended birth certificate following legitimation of illegitimate child).

A child born to a married woman but begotten by a man who is not her husband is a child "born out of wedlock." *See In re* Locklear, 314 N.C. 412, 334 S.E.2d 46 (1985).

G.S. 49-13. New birth certificate on legitimation.

A certified copy of the order of legitimation when issued under the provisions of G.S. 49-10 shall be sent by the clerk of the superior court under his official seal to the State Registrar of Vital Statistics who shall then make the new birth certificate bearing the full name of the father, and change the surname of the child so that it will be the same as the surname of the father.

When a child is legitimated under the provisions of G.S. 49-12, the State Registrar of Vital Statistics shall make a new birth certificate bearing the full name of the father upon presentation of a certified copy of the certificate of marriage of the father and mother and change the surname of the child so that it will be the same as the surname of the father.

Notes

See also G.S. 130A-118 and 130A-119 (issuance of amended birth certificate following legitimation of illegitimate child).

The provisions of this section requiring that the child's surname be the same as the surname of the father were held unconstitutional in 1981. *See* Jones v. McDowell, 53 N.C. App. 434, 281 S.E.2d 192 (1981).

Article 3
Civil Actions Regarding Illegitimate Children

G.S. 49-14. Civil action to establish paternity.

(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A certified copy of a certificate of birth of the child shall be attached to the complaint. The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding.

(b) Proof of paternity pursuant to this section shall be by clear, cogent, and convincing evidence.

(c) No such action shall be commenced nor judgment entered after the death of the putative father, unless the action is commenced either:

(1) Prior to the death of the putative father;
(2) Within one year after the date of death of the putative father, if a proceeding for administration of the estate of the putative father has not been commenced within one year of his death; or
(3) Within the period specified in G.S. 28A-19-3(a) for presentation of claims against an estate, if a proceeding for administration of the estate of the putative father has been commenced within one year of his death.

Any judgment under this subsection establishing a decedent to be the father of a child shall be entered nunc pro tunc to the day preceding the date of death of the father.

(d) If the action to establish paternity is brought more than three years after birth of a child or is brought after the death of the putative father, paternity shall not be established in a contested case without evidence from a blood or genetic marker test.

(e) Either party to an action to establish paternity may request that the case be tried at the first session of the court after the case is docketed, but the presiding judge, in his discretion, may first try any pending case in which the rights of the parties or the public demand it.

(f) When a determination of paternity is pending in a IV-D case, the court shall enter a temporary order for child support upon motion and showing of clear, cogent, and convincing evidence of paternity. For purposes of this subsection, the results of blood or genetic tests shall constitute clear, cogent, and convincing evidence of paternity if the tests show that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher. If paternity is not thereafter established, then the putative father shall be reimbursed the full amount of temporary support paid under the order.

(g) Invoices for services rendered for pregnancy, childbirth, and blood or genetic testing are admissible as evidence without requiring third party foundation testimony and shall constitute prima facie evidence of the amounts incurred for the services or for testing on behalf of the child.

Notes

See also G.S. 6-21(10) (costs and attorney fees in civil paternity actions); G.S. 8-50.1 (genetic paternity testing); G.S. 110-132.2 (administrative subpoena for genetic paternity testing); G.S.130A-118 and 130A-119 (issuance of amended birth certificate following judgment establishing paternity of illegitimate child).

Effective October 1, 1993 (for actions commenced on or after that date), G.S. 49-14 was amended to change the burden of proof in civil paternity actions from "beyond a reasonable doubt" to "clear, cogent, and convincing evidence." 1993 N.C. Sess. Laws ch. 333.

Effective October 1, 1995 (for actions commenced on or after that date), G.S. 49-14 was amended to allow the commencement or continuation of civil paternity actions after the putative father's death. 1995 N.C. Sess. Laws ch. 424.

Civil actions to establish paternity under G.S. 49-14 are within the subject matter jurisdiction of the district court. Failure to attach the child's birth certificate to the complaint in a civil action to establish paternity under this section deprives the court of subject matter jurisdiction to adjudicate paternity. *See* Reynolds v. Motley, 96 N.C. App. 299, 385 S.E.2d 548 (1989). A civil action to establish paternity of an illegitimate child may not be commenced under this section when the child has already been legitimated pursuant to G.S. 49-12. *See* Lewis v. Stitt, 86 N.C. App. 103, 356 S.E.2d 398 (1987). The district court lacks subject matter jurisdiction over a civil action to establish paternity of an illegitimate child filed under this section if a special proceeding to legitimate the child pursuant to G.S. 49-10 or G.S. 49-12.1 was filed before the civil paternity action was filed and the special proceeding is pending before the clerk of superior court or the superior court. *See* Smith v. Barbour, 154 N.C. App. 402, 571 S.E.2d 872 (2002).

The issue of paternity may be determined by a jury if either party makes a timely request for a jury trial. *See* Searcy v. Justice, 20 N.C. App. 559, 202 S.E.2d 314 (1974).

A putative father who is an indigent defendant in a civil action to establish his paternity of an illegitimate child under this section generally is not entitled to court-appointed counsel. *See* Wake County *ex rel*. Carrington v. Townes, 306 N.C. 333, 293 S.E.2d 95 (1982).

A child born to a married woman but begotten by a man who is not her husband is a child "born out of wedlock." *See* Wright v. Gann, 27 N.C. App. 45, 217 S.E.2d 761 (1975).

A putative father who is the defendant in a civil action to establish his paternity of an illegitimate child under G.S. 49-14 may not deny his paternity of the child if his paternity of the child has been adjudicated in a prior criminal nonsupport proceeding under G.S. 49-2. The continued validity of the decisions in Tidwell v. Booker, 290 N.C. 98, 225 S.E.2d 816 (1976) and similar cases involving res judicata, collateral estoppel, and privity with respect to judgments establishing paternity in civil and criminal proceedings is questionable at best, given the supreme court's decision in McInnis v. Hall, 318 N.C. 421, 349 S.E.2d 552 (1986) allowing the nonmutual assertion of a judgment as collateral estoppel. *See also* Guilford County *ex rel*. Gardner v. Davis, 123 N.C. App. 527, 473 S.E.2d 640 (1996). It is even less clear whether a prior judgment in a civil or criminal proceeding that fails to establish a putative father's paternity of an illegitimate child may be asserted as res judicata or collateral estoppel against a child, the child's mother, or a child support enforcement (IV-D) agency in a civil paternity action under G.S. 49-14. *See* Settle *ex rel*. Sullivan v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983); State *ex rel*. Tucker v. Frinzi, 344 N.C. 411, 474 S.E.2d 127 (1996).

A putative father who claims that he was tricked into fathering a child may not raise fraud or deception as a defense or counterclaim in a civil action to establish his paternity of an illegitimate child and obtain support for the child. *See* Smith v. Price, 74 N.C. App. 413, 328 S.E.2d 811 (1985).

The child whose paternity is at issue is not a necessary party in a civil action to establish paternity under this article. *See* Smith v. Bumgarner, 115 N.C. App. 149, 443 S.E.2d 744 (1994).

G.S. 50-13.6 (award of attorney fees in civil actions for child support) does not apply to civil actions to establish paternity of an illegitimate child under G.S. 49-14, but attorney fees may be awarded pursuant to G.S. 6-21(10) in connection with a civil paternity action and pursuant to G.S. 50-13.6 in a civil action for child support of an illegitimate child whose paternity has been established pursuant to G.S. 49-14. *See* Smith v. Price, 74 N.C. App. 413, 328 S.E.2d 811 (1985), *aff'd,* 315 N.C. 523, 340 S.E.2d 408 (1986).

G.S. 49-15. Custody and support of illegitimate children when paternity established.

Upon and after the establishment of paternity of an illegitimate child pursuant to G.S. 49-14, the rights, duties, and obligations of the mother and the father so established, with regard to support and custody of the child, shall be the same, and may be determined and enforced in the same manner, as if the child were the legitimate child of such father and mother. When paternity has been established, the father becomes responsible for medical expenses incident to the pregnancy and the birth of the child.

Notes

See also G.S. 50-13.4 (enforcement of child support orders); G.S. 50-13.7 and G.S. 50-13.10 (modification of child support orders); North Carolina Child Support Guidelines.

When a putative father's paternity of an illegitimate child is established pursuant to G.S. 49-14, the putative father is responsible for the child's support to the same extent as the parent of a legitimate child. An order requiring the child's father to pay child support may be entered in the civil action regarding paternity—the child's mother is not required to commence a separate civil action seeking child support under G.S. 50-13.4. *See* Tidwell v. Booker, 290 N.C. 98, 225 S.E.2d 816 (1976).

G.S. 49-16. Parties to proceeding.

Proceedings under this Article may be brought by:

(1) The mother, the father, the child, or the personal representative of the mother or the child.

(2) When the child, or the mother in case of medical expenses, is likely to become a public charge, the director of social services or such person as by law performs the duties of such official,
   a. In the county where the mother resides or is found,
   b. In the county where the putative father resides or is found, or
   c. In the county where the child resides or is found.

Notes

An illegitimate child is not a necessary party in a civil action to establish the child's paternity under G.S. 49-14. *See* Smith v. Bumgarner, 115 N.C. App. 149, 443 S.E.2d 744 (1984).

G.S. 49-17. Jurisdiction over nonresident or nonpresent persons.

(a) The act of sexual intercourse within this State constitutes sufficient minimum contact with this forum for purposes of subjecting the person or persons participating therein to the jurisdiction of the courts of this State for actions brought under this Article for paternity and support of any child who may have been conceived as a result of such act.

(b) The jurisdictional basis in subsection (a) of this section shall be construed in addition to, and not in lieu of, any basis or bases for jurisdiction within G.S. 1-75.4.

Notes

See also G.S. 52C-2-201 and 52C-2-202 (long arm jurisdiction over nonresident defendants in civil actions involving paternity or child support); Miller v. Kite, 313 N.C. 474, 329 S.E.2d 663 (1985); Cochran v. Wallace, 95 N.C. App. 167, 381 S.E.2d 853 (1989).

Chapter 49A
Rights of Children

Article 1
Children Conceived by Artificial Insemination

G.S. 49A-1. Status of child born as a result of artificial insemination.

Any child or children born as the result of heterologous artificial insemination shall be considered at law in all respects the same as a naturally conceived legitimate child of the husband and wife requesting and consenting in writing to the use of such technique.

G.S. Chapters 50 through 108A

Chapter 50
Divorce and Alimony

Article 1
Divorce, Alimony, and Child Support Generally

G.S. 50-8. Contents of complaint; verification; venue and service in action by nonresident; certain divorces validated.

* * *

In all divorce actions the complaint shall set forth the name and age of any minor child or children of the marriage, and in the event there are no minor children of the marriage, the complaint shall so state. In addition, when there are minor children of the marriage, the complaint shall state the social security number of the plaintiff, and, if known, the social security number of the defendant.

* * *

. . . The judgment of divorce shall include, where there are minor children of the parties, the social security numbers of the parties.

Notes

See Guilford County *ex rel.* Gardner v. Davis, 123 N.C. App. 527, 473 S.E.2d 640 (1996); Withrow v. Webb, 53 N.C. App. 67, 280 S.E.2d 22 (1981) (findings in divorce decree regarding children born during marriage are not binding as collateral estoppel in subsequent action involving child support); *cf.* Rice v. Rice, 147 N.C. App. 505, 555 S.E.2d 924 (2001).

Some of the language in Rice v. Rice, 147 N.C. App. 505, 555 S.E.2d 924 (2001), might be read as suggesting that a husband is estopped from denying his paternity of a child born during his marriage to the child's mother if he has stated under oath in a separation agreement or in a complaint of other pleading in a divorce proceeding that the child was born of his marriage to the child's mother. It is not at all clear, however, that North Carolina recognizes claims of "paternity by estoppel" based on the words or deeds of a presumed legal father who is not, in fact, the child's biological or adoptive parent (as opposed to the establishment of paternity via a final judgment that has previously determined that a "presumed legal father" is the child's biological or adoptive father and precludes the child's father from denying paternity in a subsequent legal proceeding through the doctrines of res judicata or collateral estoppel). Two cases, Chambers v. Chambers, 43 N.C. App. 361, 258 S.E.2d 822 (1979), and Myers v. Myers, 39 N.C. App. 201, 249 S.E.2d 853 (1978), have held (in the context of the legitimation or attempted legitimation of an illegitimate child by marriage of the child's mother and reputed father pursuant to G.S. 49-12) that the putative father of an illegitimate child is estopped from denying his paternity of that child if he has previously executed a sworn statement acknowledging his paternity of the child. Despite the holdings in these two cases, however, it is clear that the facts in *Chambers* and *Myers* did not satisfy the required elements for equitable estoppel under North Carolina law. *See* Keech v. Hendricks, 141 N.C. App. 649, 540 S.E.2d 71 (2000) (a claim for defense based on equitable estoppel generally requires a false statement by the person against whom estoppel is asserted, actual or constructive knowledge by that person of the real facts, an intent by that person that the false statement be relied upon, lack of knowledge with respect to the real facts on the part of the person who is asserting estoppel, reliance by that person on the false statement, and a detrimental change in position by that person based on the false statement). In *Rice*, the husband was estopped (under the doctrines of collateral estoppel and res judicata) from denying his paternity because the separation agreement in which he acknowledged paternity and agreed to support his child was *incorporated* into the parties' divorce decree and therefore operated as a binding

judicial determination of paternity and child support to the same extent as if the issues of paternity and child support had been litigated and adjudicated by the court.

G.S. 50-11. Effects of absolute divorce.

* * *

(b) No judgment of divorce shall render illegitimate any child in esse, or begotten of the body of the wife during coverture.

* * *

Notes

A child is presumed to be legitimate if he or she is conceived or born during the mother's marriage, but the presumption of legitimacy may be rebutted by competent evidence (including genetic test results, evidence of nonaccess or impotency, etc.) that the mother's husband is not the child's father.

G.S. 50-11.1. Children born of voidable marriage legitimate.

A child born of voidable marriage or a bigamous marriage is legitimate notwithstanding the annulment of the marriage.

G.S. 50-11.2. Judgment provisions pertaining to care, custody, tuition and maintenance of minor children.

Where the court has the requisite jurisdiction and upon proper pleadings and proper and due notice to all interested parties the judgment in a divorce action may contain such provisions respecting care, custody, tuition and maintenance of the minor children of the marriage as the court may adjudge; and from time to time such provisions may be modified upon due notice and hearing and a showing of a substantial change in condition; and if there be no minor children, the judgment may so state. . . .

Notes

See also G.S. 50-13.5(b)(3) (action for child support may be joined with or filed as motion in the cause in action for divorce); G.S. 50-13.7 and G.S. 50-13.10 (modification of child support provisions included in divorce decrees).

G.S. 50-13.1. Action or proceeding for custody of minor child.

* * *

(b) . . . Alimony, child support, and other economic issues may not be referred for mediation pursuant to this section. . . .

* * *

Notes

A civil action for child support under G.S. 50-13.4 may be joined as a claim in a civil action for child custody under G.S. 50-13.1 if the court has jurisdiction with respect to both actions. Child support claims in actions involving child custody, however, may not be referred for mediation along with custody and visitation issues under this section.

Child support and visitation are independent, not mutually dependent, rights—a parent's obligation to pay child support is not contingent on whether he or she is permitted to visit his or her child as required by a child custody order (and a parent's right to visit his or her child is not contingent on whether he or she has complied with an order requiring him or her to pay child support). *See* Appert v. Appert, 80 N.C. App. 27, 341 S.E.2d 342 (1986); *see also* G.S. 52C-3-305(d).

G.S. 50-13.4. Action for support of minor child.

(a) Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a minor child by his guardian may institute an action for the support of such child as hereinafter provided.

(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated child who is the custodial or noncustodial parent of a child shall share this primary liability for their grandchild's support with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support. However, the judge may not order support to be paid by a person who is not the child's parent or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent any court from ordering the support of a child by an agency of the State or county which agency may be responsible under law for such support.

The judge may order responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to participate in work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate.

(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1) of this section. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the

amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except

(1) If the child is otherwise emancipated, payments shall terminate at that time;
(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20.

If an arrearage for child support or fees due exists at the time that a child support obligation terminates, payments shall continue in the same total amount that was due under the terms of the previous court order or income withholding in effect at the time of the support obligation. The total amount of these payments is to be applied to the arrearage until all arrearages and fees are satisfied or until further order of the court.

(c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe uniform statewide presumptive guidelines for the computation of child support obligations of each parent as provided in Chapter 50 or elsewhere in the General Statutes and shall develop criteria for determining when, in a particular case, application of the guidelines would be unjust or inappropriate. Prior to May 1, 1990 these guidelines and criteria shall be reported to the General Assembly by the Administrative Office of the Courts by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The purpose of the guidelines and criteria shall be to ensure that payments ordered for the support of a minor child are in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. The guidelines shall include a procedure for setting child support, if any, in a joint or shared custody arrangement which shall reflect the other statutory requirements herein.

Periodically, but at least once every four years, the Conference of Chief District Judges shall review the guidelines to determine whether their application results in appropriate child support award amounts. The Conference may modify the guidelines accordingly. The Conference shall give the Department of Health and Human Services, the Administrative Office of the Courts, and the general public an opportunity to provide the Conference with information relevant to the development and review of the guidelines. Any modifications of the guidelines or criteria shall be reported to the General Assembly by the Administrative Office of the Courts before they become effective by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The guidelines, when adopted or modified, shall be provided to the Department of Health and Human Services and the Administrative Office of the Courts, which shall disseminate them to the public through local IV-D offices, clerks of court, and the media.

Until July 1, 1990, the advisory guidelines adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall operate as presumptive guidelines and the factors adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall constitute criteria for varying from the amount of support determined by the guidelines.

(d) In non-IV-D cases, payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or to the State Child Support Collection and Disbursement Unit, for the benefit of the

child. In IV-D cases, payments for the support of a minor child shall be ordered to be paid to the State Child Support Collection and Disbursement Unit for the benefit of the child.

(d1) For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property solely owned by the obligor in payment of arrearages of child support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which payment for the support of a minor child is ordered and alimony or postseparation support is also ordered, the order shall separately state and identify each allowance.

(e1) In IV-D cases, the order for child support shall provide that the clerk shall transfer the case to another jurisdiction in this State if the IV-D agency requests the transfer on the basis that the obligor, the custodian of the child, and the child do not reside in the jurisdiction in which the order was issued. The IV-D agency shall provide notice of the transfer to the obligor by delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure. The clerk shall transfer the case to the jurisdiction requested by the IV-D agency, which shall be a jurisdiction in which the obligor, the custodian of the child, or the child resides. Nothing in this subsection shall be construed to prevent a party from contesting the transfer.

(f) Remedies for enforcement of support of minor children shall be available as herein provided.

(1) The court may require the person ordered to make payments for the support of a minor child to secure the same by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.
(2) If the court requires the transfer of real or personal property or an interest therein as provided in subsection (e) as a part of an order for payment of support for a minor child, or for the securing thereof, the court may also enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.
(3) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the General Statutes, shall be available in actions for child-support payments as in other cases.
(4) The remedies of attachment and garnishment, as provided in Article 35 of Chapter 1 of the General Statutes, shall be available in an action for child-support payments as in other cases, and for such purposes the child or person bringing an action for child support shall be deemed a creditor of the defendant. Additionally, in accordance with the provisions of G.S. 110-136, a continuing wage garnishment proceeding for wages due or to become due may be instituted by motion in the original child support proceeding or by independent action through the filing of a petition.
(5) The remedy of injunction, as provided in Article 37 of Chapter 1 of the General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for child support as in other cases.
(6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in action for child support as in other cases.
(7) A minor child or other person for whose benefit an order for the payment of child support has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to fraudulent conveyances.
(8) Except as provided in Article 15 of Chapter 44 of the General Statutes, a judgment for child support shall not be a lien against real property unless the judgment

expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected; but past due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other judgments and may include provisions for periodic payments.

(9) An order for the periodic payments of child support or a child support judgment that provides for periodic payments is enforceable by proceedings for civil contempt, and disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.

Notwithstanding the provisions of G.S. 1-294, an order for the payment of child support which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for child support until the appeal is decided, if justice requires.

(10) The remedies provided by Chapter 1 of the General Statutes, Article 28, Execution; Article 29B, Execution Sales; and Article 31, Supplemental Proceedings, shall be available for the enforcement of judgments for child support as in other cases, but amounts so payable shall not constitute a debt as to which property is exempt from execution as provided in Article 16 of Chapter 1C of the General Statutes.

(11) The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available.

(g) An individual who brings an action or motion in the cause for the support of a minor child, and the individual who defends the action, shall provide to the clerk of the court in which the action is brought or the order is issued, the individual's social security number. The child support order shall contain the social security number of the parties as evidenced in the support proceeding.

(h) Child support orders initially entered or modified on and after October 1, 1998, shall contain the name of each of the parties, the date of birth of each party, the social security number of each party, and the court docket number. The Administrative Office of the Courts shall transmit to the Department of Health and Human Services, Child Support Enforcement Program, on a timely basis, the information required to be included on orders under this subsection.

Notes

See also G.S. 50-13.5; G.S. 50-13.6 (attorney fees); G.S. 50-13.7 and G.S. 13.10 (modification of child support orders); G.S. 50-13.9; G.S. 50-13.11 (orders for medical support); G.S. 110-133 (voluntary support agreements); G.S. 110-139(f) (centralized State Child Support Collection and Disbursement Unit); North Carolina Child Support Guidelines.

An action for child support under G.S. 50-13.4 and G.S. 50-13.5 is legally separate and distinct from actions seeking "retroactive child support or prior maintenance" (reimbursement for actual expenditures made on behalf of a minor child by a parent, person, or agency that has custody of the child prior to commencement of an action seeking child support under G.S.50-13.4 and 50-13.5); actions by third parties for "necessaries" provided on behalf of a minor child; and actions seeking reimbursement of public assistance paid on behalf of a dependent child. *See* Tidwell v. Booker, 290 N.C. 98, 225 S.E.2d 816 (1976) (claims for prior maintenance); Buff v. Carter, 76 N.C. App. 145, 331 S.E.2d 705 (1985) (claims for prior maintenance); Cohen v. Cohen, 100 N.C. App. 334, 396 S.E.2d 344 (1990) (claims for prior maintenance); Lawrence v. Tise, 107 N.C. App. 140, 419 S.E.2d 176 (1992) (claims for prior maintenance); Taylor v. Taylor, 118 N.C. App. 356, 455 S.E.2d 442 (1995) (claims for prior maintenance); Alamance County Hospital v. Neighbors, 315 N.C. 362, 338 S.E.2d 87 (1986) (claims for necessaries); G.S. 110-

135 (claims for past paid public assistance). *See also* G.S. 1-52(3) (statute of limitations for claims for prior maintenance).

There is no statute of limitations for commencing a civil action seeking support for a minor child. *See* Lenoir County *ex rel*. Cogdell v. Johnson, 46 N.C. App. 182, 264 S.E.2d 816 (1980).

A parent, person, or agency that has physical custody of a minor child has standing to commence an action seeking support for that child even if the parent, person, or agency does not have legal custody of the child under a court order. *See* Craig v. Kelley, 89 N.C. App. 458, 366 S.E.2d 249 (1988); Becton v. George, 90 N.C. App. 607, 369 S.E.2d 366 (1988). *See also* G.S. 110-130 (child support action by state or local child support enforcement (IV-D) agency on behalf of custodian or child). The existence of a valid, unincorporated separation agreement requiring a parent to pay child support does not preclude the custodial parent from filing a civil action requesting the court to enter a child support order pursuant to this section. *See* Powers v. Parisher, 104 N.C. App. 400, 409 S.E.2d 725 (1991); Bottomley v. Bottomley, 82 N.C. App. 231, 346 S.E.2d 317 (1986).

Before 1981, a child's father was primarily responsible for the child's support and the child's mother was secondarily responsible. G.S. 50-13.4 was amended in 1981 to make the mother and father of a minor child primarily and jointly responsible for the child's support. *See* Plott v. Plott, 313 N.C. 63, 326 S.E.2d 863 (1985).

A noncustodial parent's obligation to pay child support is not dependent on the custodial parent's compliance with a court order granting visitation rights to the noncustodial parent. *See* Appert v. Appert, 80 N.C. App. 27, 341 S.E.2d 342 (1986); Sowers v. Toliver, 150 N.C. App. 114, 562 S.E.2d 593 (2002).

A parent's duty to support his or her child is not excused simply because the child has separate earnings, income, or property. *See* Sloop v. Friberg, 70 N.C. App. 690, 320 S.E.2d 912 (1984); Browne v. Browne, 101 N.C. App. 617, 400 S.E.2d 736 (1991); *cf.* Sloan v. Sloan, 87 N.C. App. 392, 360 S.E.2d 816 (1987).

A parent may not contract away his or her legal obligation to support his or her child. *See* Cartrette v. Cartrette, 73 N.C. App. 169, 325 S.E.2d 671 (1985).

A court may order the custodial parent to allow the noncustodial parent who is required to pay child support to claim the federal and state income tax exemptions for a child. *See* Cohen v. Cohen, 100 N.C. App. 334, 396 S.E.2d 344 (1990). A court, however, may not order a parent who is the representative payee of Social Security benefits for his or her child to pay those benefits to the other parent. *See* Brevard v. Brevard, 74 N.C. App. 484, 328 S.E.2d 789 (1985).

The provisions of G.S. 50-13.4 regarding the responsibility of grandparents to support a grandchild born to a minor parent were enacted in 1995 and apply with respect to the support of children born on or after October 1, 1995. 1995 N.C. Sess. Laws ch. 518. *See also* Whitman v. Kiger, 139 N.C. App. 44, 533 S.E.2d 807 (2000), *aff'd,* 353 N.C. 360, 543 S.E.2d 476 (2001).

A written agreement by a stepparent to support his or her minor stepchild must be acknowledged by the stepparent before a notary public or other person authorized to administer oaths. *See* Moyer v. Moyer, 122 N.C. App. 723, 471 S.E.2d 676 (1996). The liability of a stepparent or other person standing *in loco parentis* for the support of a child is secondary to that of the child's parents. *See* Duffey v. Duffey, 113 N.C. App. 382, 438 S.E.2d 445 (1994).

Absent findings to the contrary, an order requiring a parent to pay child support is effective as of the date the action was commenced. *See* State *ex rel*. Miller v. Hinton, 147 N.C. App. 700, 556 S.E.2d 634 (2001). A court may award pre-judgment interest with respect to child support that

accrues between the date the action is commenced and the date an order is entered. *See* Taylor v. Taylor, 128 N.C. App. 180, 493 S.E.2d 819 (1997).

Absent an enforceable contract or agreement, a parent has no legal obligation to support an unemancipated child who has reached the age of eighteen and is not in primary or secondary school. *See* Harding v. Harding, 46 N.C. App. 62, 264 S.E.2d 131 (1980). Before 1993, G.S. 50-13.4 allowed a court to order a parent to continue paying child support when his or her child remained in primary or secondary school after reaching the age of eighteen. Effective October 1, 1993 (for child support orders entered on or after that date), G.S. 50-13.4 requires a parent to continue paying child support when his or her child remains in primary or secondary school after reaching the age of eighteen unless the court orders otherwise. 1993 N.C. Sess. Laws ch. 335. *See also* Hendricks v. Sanks, 143 N.C. App. 544, 545 S.E.2d 779 (2001); Leak v. Leak, 129 N.C. App. 142, 497 S.E.2d 702 (1998). If a child support order requires a parent to pay an unallocated sum as child support for two or more children, the obligor may not unilaterally and proportionately reduce the amount of his or her child support payments when an older child reaches the age of eighteen or graduates from high school and a younger child remains entitled to child support. *See* Craig v. Craig, 103 N.C. App. 615, 406 S.E.2d 656 (1991).

G.S. 50-13.8 formerly required a parent to provide support for a child who, upon reaching the age of majority, was mentally or physically incapable of self-support. The provisions of G.S. 50-13.8 requiring a parent to support an adult, disabled child were repealed in 1979. *See* 1979 N.C. Sess. Laws ch. 838, sec. 29; Jackson v. Jackson, 102 N.C. App. 574, 402 S.E.2d 869 (1991).

The last paragraph of G.S. 50-13.4(c) was enacted by S.L. 2003-288 and applies to child support orders that terminate on or after July 4, 2003.

District courts are required to use North Carolina's child support guidelines when entering orders for child support under this section. The guidelines, however, do not apply to claims for "retroactive child support or prior maintenance" or in determining the child support obligation of a stepparent or other party who is secondarily liable for child support. *See* Lawrence v. Tise, 107 N.C. App. 140, 419 S.E.2d 176 (1992); Duffey v. Duffey, 113 N.C. App. 382, 438 S.E.2d 445 (1994). *See also* Pataky v. Pataky, ___ N.C. App. ___, ___ S.E.2d ___ (2003) (holding that child support guidelines do not apply in cases involving initial establishment of a child support order if child support has been determined by the parties under a valid *unincorporated* separation agreement and a party has not rebutted the presumption (established under Fuchs v. Fuchs, 260 N.C. 635, 133 S.E.2d 487 (1963)) that the amount of child support payable under the agreement is just and reasonable).

The amount of child support determined under the guidelines is presumed to meet the reasonable needs of a child considering the parents' ability to support the child. If a court orders a parent to pay child support in an amount that is greater or less than the amount determined under the child support guidelines, it must make findings regarding the amount of support that would be due under the guidelines, the reasonable needs of the child and the relative ability of each parent to provide support, whether the amount of support under the guidelines would meet or exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would otherwise be unjust or inappropriate, and the amount of support required to meet the reasonable needs of the child considering the relative ability of each parent to provide support. *See* Sain v. Sain, 134 N.C. App. 460, 517 S.E.2d 921 (1999); Brooker v. Brooker, 133 N.C. App. 285, 515 S.E.2d 234 (1999); Rowan County Department of Social Services *ex rel.* Brooks v. Brooks, 135 N.C. App. 776, 522 S.E.2d 590 (1999).

See Garrison *ex rel.* Williams v. Connor, 122 N.C. App. 702, 471 S.E.2d 644 (1996) (upholding authority of Conference of Chief District Court Judges to adopt child support guidelines provisions regarding modification of child support).

A court may enter an interim or temporary child support order pending the trial of an action seeking child support and enter a subsequent permanent order that retroactively increases the amount of support a parent is required to pay beyond the amount stated in the temporary order. *See* Sikes v. Sikes, 330 N.C. 595, 411 S.E.2d 588 (1992). In the absence of appropriate findings, court orders requiring the payment of child support are effective retroactively from the date the claim for child support was filed. *See* Albemarle Child Support Enforcement Agency *ex rel.* Miller v. Hinton, 147 N.C. App. 700, 556 S.E.2d 634 (2001).

Temporary reconciliation or resumption of sexual relationship does not necessarily terminate husband's obligation to pay court-ordered child support. *See* Walker v. Walker, 59 N.C. App. 485, 297 S.E.2d 125 (1982).

When an obligor is delinquent in paying child support, the trial court may order him or her to make additional payments to pay off the arrearage over a period of time without modifying his or her continuing obligation to pay current child support. A trial court may reduce the obligor's arrearage to judgment under G.S. 50-13.4(f)(8) without finding that the obligor willfully failed to pay the support owed. *See* Bogan v. Bogan, 134 N.C. App. 176, 516 S.E.2d 641 (1999). *See also* Griffin v. Griffin, 96 N.C. App. 324, 385 S.E.2d 526 (1989) and Baker v. Showalter, 151 N.C. App. 546, 566 S.E.2d 172 (2002) (obligee was not equitably estopped from seeking judgment for child support arrearages).

Remedies for enforcing child support orders under G.S. 50-13.4(f) are not mutually exclusive. *See* Griffin v. Griffin, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

G.S. 50-13.5. Procedure in actions for custody or support of minor children.

(a) Procedure. The procedure in actions for . . . support of minor children shall be as in civil actions, except as provided in this section and in G.S. 50-19. . . .

(b) Type of Action. An action brought under the provisions of this section may be maintained as follows:

(1) As a civil action.
(2) [Repealed.]
(3) Joined with an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
(4) As a cross action in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
(5) By motion in the cause in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
(6) Upon the court's own motion in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
(7) In any of the foregoing the judge may issue an order requiring that the body of the minor child be brought before him.

(c) Jurisdiction in Actions or Proceedings for Child Support and Child Custody.

(1) The jurisdiction of the courts of this State to enter orders providing for the support of a minor child shall be as in actions or proceedings for the payment of money or the transfer of property.

* * *

(d) Service of Process; Notice; Interlocutory Orders.

(1) . . . Motions for support of a minor child in a pending action may be made on 10 days notice to the other parties and compliance with G.S. 50-13.5(e). . . .
(2) If the circumstances of the case render it appropriate, upon gaining jurisdiction of the minor child the court may enter orders for the temporary . . . support of the child, pending the service of process or notice as herein provided.

* * *

(e) Notice to Additional Persons in Support Actions and Proceedings; Intervention.

(1) The parents of the minor child whose addresses are reasonably ascertainable; any person, agency, organization or institution having actual care, control, or custody of a minor child; and any person, agency, organization or institution required by court order to provide for the support of a minor child, either in whole or in part, not named as parties and served with process in an action or proceeding for the support of such child, shall be given notice by the party raising the issue of support.

(2) The notice herein required shall be in the manner provided by the Rules of Civil Procedure for the service of notices in actions. Such notice shall advise the person to be notified of the name of the child, the names of the parties to the action or proceeding, the court in which the action or proceeding was instituted, and the date thereof.

(3) In the discretion of the court, failure of such service of notice shall not affect the validity of any order or judgment entered in such action or proceeding.

(4) Any person required to be given notice as herein provided may intervene in an action or proceeding for support of a minor child by filing in apt time notice of appearance or other appropriate pleadings.

(f) Venue. An action or proceeding in the courts of this State for . . . support of a minor child may be maintained in the county where the child resides or is physically present or in a county where a parent resides, except as hereinafter provided. If an action for annulment, for divorce, either absolute or from bed and board, or for alimony without divorce has been previously instituted in this State, until there has been a final judgment in such case, any action or proceeding for . . . support of the minor children of the marriage shall be joined with such action or be by motion in the cause in such action. If an action or proceeding for the . . . support of a minor child has been instituted and an action for annulment or for divorce, either absolute or from bed and board, or for alimony without divorce is subsequently instituted in the same or another county, the court having jurisdiction of the prior action or proceeding may, in its discretion direct that the action or proceeding for . . . support of a minor child be consolidated with such subsequent action, and in the event consolidation is ordered, shall determine in which court such consolidated action or proceeding shall be heard.

(g) Custody and Support Irrespective of Parents' Rights Inter Partes. Orders for . . . support of minor children may be entered when the matter is before the court as provided by this section, irrespective of the rights of the wife and the husband as between themselves in an action for annulment or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.

(h) Court Having Jurisdiction. When a district court having jurisdiction of the matter shall have been established, actions or proceedings for . . . support of minor children shall be heard without a jury by the judge of such district court, and may be heard at any time.

* * *

Notes

See also G.S. 1-75.4 and G.S. 52C-2-201 (personal jurisdiction); G.S. 1A-1 (rules of civil procedure); G.S. 110-129.1 (transfer of venue in IV-D child support cases); G.S. 110-133 (voluntary support agreements).

A court does not have subject matter jurisdiction to enter a new child support order requiring a parent to support a child if a court or tribunal of another state has entered a valid child support order regarding the parent's obligation to support that child and that order is entitled to recognition as the one "controlling" child support order in the case under the Uniform Interstate Family Support Act (UIFSA) or the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA). *See* G.S. 52C-2-207 and G.S. 52C-4-401; 28 U.S.C. § 1738B. *See also* G.S. 52C-2-

204. A child support order entered in violation of UIFSA's and FFCCSOA's "one order" rules is void for lack of subject matter jurisdiction. *See* Onslow County *ex rel*. Roberts v. Roberts, Case No. 99-502 (N.C. Ct. App. 2000).

A North Carolina court does not have subject matter jurisdiction over a child support claim asserted against a Native American parent who resides on a federally recognized Indian reservation in North Carolina. *See* Jackson County *ex rel*. Smoker v. Smoker, 341 N.C. 182, 459 S.E.2d 789 (1995); State *ex rel*. West v. West, 341 N.C. 188, 459 S.E.2d 791 (1995).

When a divorce action has been filed and a final judgment of divorce has not been entered, child support claims must be joined with the pending divorce proceeding. *See* Holbrook v. Holbrook, 38 N.C. App. 303, 247 S.E.2d 923 (1978). After a court has entered a final judgment in a divorce proceeding in which the issue of child support has not been raised, child support claims may be joined in the divorce proceeding or filed as an independent action in any county in which venue is proper. *See* Johnson v. Johnson, 14 N.C. App. 378, 188 S.E.2d 711 (1972).

A North Carolina district court may not enter a new child support order regarding a parent's obligation to support a child if a district court in another district has entered a child support order regarding the parent's obligation to support that child and the first court continues to exercise jurisdiction with respect to the case. *See* Tate v. Tate, 9 N.C. App. 681, 177 S.E.2d 455 (1970). If, however, a party fails to raise abatement or venue as a defense, a district court may exercise jurisdiction to modify a child support order previously entered by a district court in another district. *See* Brooks v. Brooks, 107 N.C. App. 44, 418 S.E.2d 534 (1992). *See also* Broyhill v. Broyhill, 81 N.C. App. 147, 343 S.E.2d 605 (1986); Powers v. Parisher, 104 N.C. App. 400, 409 S.E.2d 725 (1991).

When a parent has filed a Chapter 7 or Chapter 13 bankruptcy case, the automatic stay provisions of the federal Bankruptcy Code do *not* prevent a court from entering an order requiring the parent to pay child support (or from modifying an existing child support order). *See* 11 U.S.C. § 362(b)(2)(A). The obligor's bankruptcy, however, *may*, at least temporarily, prohibit or limit the court's enforcement of a child support order against the obligor, the obligor's wages, or the obligor's property. Child support obligations generally are not dischargeable in a bankruptcy proceeding. *See* 11 U.S.C. § 523(a)(5).

Child support actions are *in personam*, not *in rem*; a court must have personal jurisdiction over a parent before ordering him or her to pay support for his or her child. *See* Lynch v. Lynch, 96 N.C. App. 601, 386 S.E.2d 607 (1989). Once a court has subject matter jurisdiction and personal jurisdiction over a parent in a civil action involving child support, the court retains *continuing personal jurisdiction* over the parent to enforce or modify a child support order entered against the parent, and it is not necessary to reestablish a basis for personal jurisdiction over the parent when subsequent proceedings to enforce or modify the child support order are filed. A court, however, may lose *continuing, exclusive jurisdiction* to enforce or modify a child support order if the order has been validly modified by a court or tribunal of another state pursuant to UIFSA or FFCCSOA. *See* G.S. 52C-2-205, G.S. 52C-2-206, G.S. 52C-2-207, G.S. 52C-6-612; 28 U.S.C. § 1738B.

See also Schumacher v. Schumacher, 109 N.C. App. 309, 426 S.E.2d 467 (1993) (trial court may not try case involving child support at session for civil motions).

G.S. 50-13.6. Counsel fees in actions for custody and support of minor children.

In an action or proceeding for the . . . support . . . of a minor child, including a motion in the cause for the modification or revocation of an existing order for . . . support, . . . the court may in its discretion order payment of reasonable attorney's fees to an interested party acting in good faith who has insufficient means to defray the expense of the suit. Before ordering payment of a

fee in a support action, the court must find as a fact that the party ordered to furnish support has refused to provide support which is adequate under the circumstances existing at the time of the institution of the action or proceeding; provided however, should the court find as a fact that the supporting party has initiated a frivolous action or proceeding the court may order payment of reasonable attorney's fees to an interested party as deemed appropriate under the circumstances.

Notes

See also G.S. 6-21(10) (costs and attorney fees in civil paternity actions).

G.S. 50-13.6 also applies to claims for "prior maintenance" or "retroactive child support." *See* Napowsa v. Langston, 95 N.C. App. 14, 381 S.E.2d 882 (1989); *cf.* Tidwell v. Booker, 290 N.C. 98, 225 S.E.2d 816 (1976).

A parent who is found in civil contempt for failing to pay child support may be required to pay attorney fees pursuant to G.S. 50-13.6. *See* Smith v. Smith, 121 N.C. App. 334, 465 S.E.2d 52 (1996).

The trial court must make written findings regarding award of attorney fees. *See* Savani v. Savani, 102 N.C. App. 496, 403 S.E.2d 900 (1991); Warner v. Latimer, 68 N.C. App. 170, 314 S.E.2d 789 (1984). *See also* Quick v. Quick, 67 N.C. App. 528, 313 S.E.2d 233 (1984); Cobb v. Cobb, 79 N.C. App. 592, 339 S.E.2d 825 (1986). The court is not required to consider the obligor's estate if the obligee has sufficient means to defray the expenses of an action involving child support. *See* Taylor v. Taylor, 343 N.C. 50, 468 S.E.2d 33 (1996); Van Every v. McGuire, 348 N.C. 58, 497 S.E.2d 689 (1998). When an action involves issues related to child custody or visitation as well as the issue of child support, the trial court is *not* required to find that the obligor has failed to provide adequate support before it awards attorney fees. *See* Theokas v. Theokas, 97 N.C. App. 626, 389 S.E.2d 278 (1990); *cf.* Gibson v. Gibson, 68 N.C. App. 566, 316 S.E.2d 99 (1984); Hudson v. Hudson, 299 N.C. 465, 263 S.E.2d 719 (1980). *See also* Walker v. Tucker, 69 N.C. App. 607, 317 S.E.2d 923 (1984) (court abused discretion in awarding attorney fees against obligor when court denied obligee's motion for increase in child support). *See also* Belcher v. Averette, 152 N.C. App. 452, 568 S.E.2d 630 (2002) (court's finding that the children, on whose behalf child support action was brought, had insufficient means to defray costs of action was sufficient to support court's award of attorneys fees to custodial parent).

G.S. 50-13.7. Modification of order for child support or custody.

(a) An order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10. . . .

(b) When an order for support of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and upon a showing of changed circumstances, enter a new order for support which modifies or supersedes such order for support, subject to the limitations of G.S. 50-13.10. . . .

Notes

See also G.S. 50-13.10 (limiting a court's authority to retroactively modify past-due child support arrearages).

The parties in a civil child support action may not modify a child support order entered in that action by entering into an extrajudicial agreement between themselves. *See* Baker v. Showalter, 151 N.C. App. 546, 566 S.E.2d 172 (2002).

The authority of a North Carolina court under G.S. 50-13.7(b) to modify a child support order entered by a court of another state is significantly limited by the "one order" and "continuing, exclusive jurisdiction" rules in the Uniform Interstate Family Support Act (UIFSA) and the

federal Full Faith and Credit for Child Support Orders Act (FFCCSOA). *See* G.S. 52C-2-207 and G.S. 52C-6-611; 28 U.S.C. § 1738B.

A party seeking modification of a child support order must file a motion seeking modification of the order; a court does not have the authority to modify a child support order *sua sponte*. *See* Royall v. Sawyer, 120 N.C. App. 880, 463 S.E.2d 578 (1995). A motion seeking modification of a child support order must be filed with the court that entered the order. *See* Tate v. Tate, 9 N.C. App. 681, 177 S.E.2d 455 (1970); Brooker v. Brooker, 133 N.C. App. 285, 515 S.E.2d 234 (1999); *cf*. Brooks v. Brooks, 107 N.C. App. 44, 418 S.E.2d 534 (1992).

A county department of social services that provides public assistance to a child and to which child support rights have been assigned under G.S. 110-137 is an "interested party" with standing under G.S. 50-13.7 to seek modification of an order providing for the child's support. *See* Cox v. Cox, 44 N.C. App. 339, 260 S.E.2d 812 (1979).

The party seeking modification of a child support order has the burden of proving, by a preponderance of the evidence, that a substantial change of circumstances has occurred since the order was entered or last modified. *See* Allen v. Allen, 7 N.C. App. 555, 173 S.E.2d 10 (1970). The trial court must make findings regarding the "ultimate" (not evidentiary) facts upon which its conclusion that there has been a change of circumstances is based. *See* Brooker v. Brooker, 133 N.C. App. 285, 515 S.E.2d 234 (1999).

Modification of a child support order is a two-step procedure. The court must first determine whether there has been a substantial change of circumstances since the order was entered. If the court determines there has not been a substantial change of circumstances, the motion must be denied and the order may not be modified. If the court determines there has been a substantial change of circumstances, it must enter a modified child support order based on the North Carolina Child Support Guidelines and the parties' current incomes and child-related expenses (unless there are sufficient grounds for deviating from the presumptive guidelines). *See* Davis v. Risley, 104 N.C. App. 798, 411 S.E.2d 171 (1991); McGee v. McGee, 118 N.C. App. 19, 453 S.E.2d 531 (1995).

North Carolina's child support guidelines authorize modification of child support orders that are at least three years old and provide 15 percent more or less support than the amount of support due under the guidelines based on the parties' current incomes. *See* Garrison *ex rel.* Williams v. Connor, 122 N.C. App. 702, 471 S.E.2d 644 (1996).

A court may modify a child support order based on a significant increase or decrease in the needs of a child. *See* Craig v. Kelly, 89 N.C. App. 458, 366 S.E.2d 249 (1988); Koufman v. Koufman, 330 N.C. 93, 408 S.E.2d 729 (1991). *See also* Padilla v. Lusth, 118 N.C. App. 709, 457 S.E.2d 319 (1995); McGee v. McGee, 118 N.C. App. 19, 453 S.E.2d 531 (1995). *Cf.* Waller v. Waller, 20 N.C. App. 710, 202 S.E.2d 791 (1974); Holder v. Holder, 87 N.C. App. 578, 361 S.E.2d 891 (1987).

A court may modify a child support order based on a substantial, involuntary decrease in the obligor's income. *See* Pittman v. Pittman, 114 N.C. App. 808, 443 S.E.2d 96 (1994); Hammill v. Cusack, 118 N.C. App. 82, 453 S.E.2d 539 (1995); Askew v. Askew, 119 N.C. App. 242, 458 S.E.2d 217 (1995).

A court may modify a child support order based on a transfer of the child's custody between the obligor and obligee. *See* Kowalick v. Kowalick, 129 N.C. App. 781, 501 S.E.2d 671 (1998); Spencer v. Spencer, 133 N.C. App. 38, 514 S.E.2d 283 (1999).

A court may modify a child support order that requires a parent to support two or more children when the parent's legal obligation to support the older child terminates (for example,

when the older child is emancipated or reaches the age of eighteen and is no longer in elementary or secondary school). *See* Craig v. Craig, 103 N.C. App. 615, 406 S.E.2d 656 (1991); Rowan County Department of Social Services v. Brooks, 135 N.C. App. 776, 522 S.E.2d 590 (1999).

A substantial increase in the obligor's income or a substantial decrease in the obligee's income may not, in and of itself, constitute a sufficient change of circumstances under G.S. 50-13.7. *See* Thomas v. Thomas, 134 N.C. App. 591, 518 S.E.2d 513 (1999); Mittendorff v. Mittendorff, 133 N.C. App. 343, 515 S.E.2d 464 (1999); Schroader v. Schroader, 120 N.C. App. 790, 463 S.E.2d 790 (1995). A voluntary reduction in the obligor's or obligee's income is not, in and of itself, a substantial change of circumstances under G.S. 50-13.7. *See* Askew v. Askew, 119 N.C. App. 242, 458 S.E.2d 217 (1995); King v. King, 144 N.C. App. 391, 547 S.E.2d 846 (2001); *cf.* Spencer v. Spencer, 133 N.C. App. 38, 514 S.E.2d 283 (1999) (obligor's "voluntary" reduction in income due to retirement constituted a change in circumstances justifying modification of child support order). The marriage or remarriage of an obligor or obligee may not, in and of itself, constitute a substantial change of circumstances under G.S. 50-13.7. *See* Kelly v. Kelly, 77 N.C. App. 632, 335 S.E.2d 780 (1985); Hassell v. Means, 42 N.C. App. 524, 257 S.E.2d 123 (1979). A parent's responsibility to support a child born after a child support order for another child is entered (or to support a child under a subsequent child support order) is not, in and of itself, a sufficient change of circumstances under G.S. 50-13.7. *See* North Carolina Child Support Guidelines.

G.S. 50-13.9. Procedure to insure payment of child support.

(a) Upon its own motion or upon motion of either party, the court may order at any time that support payments be made to the State Child Support Collection and Disbursement Unit for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) apply.

(b) After entry of an order by the court under subsection (a) of this section, the State Child Support Collection and Disbursement Unit shall transmit child support payments that are made to it to the custodial parent or other party entitled to receive them, unless a court order requires otherwise.

(b1) In a IV-D case:

(1) The designated child support enforcement agency shall have the sole responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.

(2) The clerk of court shall maintain all official records in the case.

(3) The designated child support enforcement agency shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received. In any action establishing, enforcing, or modifying a child support order, the payment records maintained by the designated child support agency shall be admissible evidence, and the court shall permit the designated representative to authenticate those records.

(b2) In a non-IV-D case:

(1) The clerk of court shall have the responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate. The State Child Support Collection and Disbursement Unit shall notify the clerk of court of all payments made in non-IV-D cases so that the clerk of court can initiate enforcement proceedings as provided in subsection (d) of this section.

(2) The clerk of court shall maintain all official records in the case.
(3) The clerk of court shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received.

(c) In a non-IV-D case, the parties affected by the order shall inform the clerk of court of any change of address or of other condition that may affect the administration of the order. In a IV-D case, the parties affected by the order shall inform the designated child support enforcement agency of any change of address or other condition that may affect the administration of the order. The court may provide in the order that a party failing to inform the court or, as appropriate, the designated child support enforcement agency, of a change of address within a reasonable period of time may be held in civil contempt.

(d) In a non-IV-D case, when the clerk of superior court is notified by the State Child Support Collection and Disbursement Unit that an obligor has failed to make a required payment of child support and is in arrears, the clerk of superior court shall mail by regular mail to the last known address of the obligor a notice of delinquency. The notice shall set out the amount of child support currently due and shall demand immediate payment of that amount. The notice shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, revocation of licensing privileges, or other appropriate means. Failure to receive the delinquency notice is not a defense in any subsequent proceeding. Sending the notice of delinquency is in the discretion of the clerk if the clerk has, during the previous 12 months, sent a notice or notices of delinquency to the obligor for nonpayment, or if income withholding has been implemented against the obligor or the obligor has been previously found in contempt for nonpayment under the same child support order.

If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency notice for any of the reasons provided in this subsection, the clerk shall cause an enforcement order to be issued and shall issue a notice of hearing before a district court judge. The enforcement order shall order the obligor to appear and show cause why the obligor should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to the obligor's employment, the obligor's licensing privileges, and the amount and sources of the obligor's disposable income. The enforcement order shall state:

(1) That the obligor is under a court order to provide child support, the name of each child for whose benefit support is due, and information sufficient to identify the order;
(2) That the obligor is delinquent and the amount of overdue support;
(2a) That the court may order the revocation of some or all of the obligor's licensing privileges if the obligor is delinquent in an amount equal to the support due for one month;
(3) That the court may order income withholding if the obligor is delinquent in an amount equal to the support due for one month;
(4) That income withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10;
(5) That failure to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income will be grounds for contempt;

(6) That if income withholding is not an available or appropriate remedy, the court may determine whether the obligor is in contempt or whether any other enforcement remedy is appropriate.

The enforcement order may be signed by the clerk or a district court judge, and shall be served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. The clerk shall also notify the party to whom support is owed of the pending hearing. The clerk may withdraw the order to the supporting party upon receipt of the delinquent payment. On motion of the person to whom support is owed, with the approval of the district court judge, if the district court judge finds it is in the best interest of the child, no enforcement order shall be issued.

When the matter comes before the court, the court shall proceed as in the case of a motion for income withholding under G.S. 110-136.5. If income withholding is not an available or adequate remedy, the court may proceed with contempt, imposition of a lien, or other available, appropriate enforcement remedies.

This subsection shall apply only to non-IV-D cases, except that the clerk shall issue an enforcement order in a IV-D case when requested to do so by a IV-D obligee.

(e) The clerk of court shall maintain and make available to the district court judge a list of attorneys who are willing to undertake representation, pursuant to this section, of persons to whom child support is owed. No attorney shall be placed on such list without his permission.

(f) At least seven days prior to an enforcement hearing as set forth in subsection (d), the clerk must notify the district court judge of all cases to be heard for enforcement at the next term, and the judge shall appoint an attorney from the list described in subsection (e) to represent each party to whom support payments are owed if the judge deems it to be in the best interest of the child for whom support is being paid, unless:

(1) The attorney of record for the party to whom support payments are owed has notified the clerk of court that he will appear for said party; or
(2) The party to whom support payments are owed requests the judge not to appoint an attorney; or
(3) An attorney for the enforcement of child support obligations pursuant to Title IV, Part D, of the Social Security Act as amended is available.

The judge may order payment of reasonable attorney's fees as provided in G.S. 50-13.6.

(g) Nothing in this section shall preclude the independent initiation by a party of proceedings for civil contempt or for income withholding.

Notes

See also G.S. 5A-11 (criminal contempt); G.S. 5A-21 (civil contempt); G.S. 50-13.12 (license revocation); G.S. 110-136.3 through G.S. 110-136.10 (income withholding); G.S. 110-139(f) (centralized State Child Support Collection and Disbursement Unit).

The provision in G.S. 50-13.9(b1)(3) regarding the admissibility of child support payment records in IV-D cases was enacted in 2001. *See* S.L. 2001-237 (effective June 23, 2001).

G.S. 50-13.10. Past due child support vested; not subject to retroactive modification; entitled to full faith and credit.

(a) Each past due child support payment is vested when it accrues and may not thereafter be vacated, reduced, or otherwise modified in any way for any reason, in this State or any other state, except that a child support obligation may be modified as otherwise provided by law, and a vested past due payment is to that extent subject to divestment, if, but only if, a written motion is filed, and due notice is given to all parties either:

(1) Before the payment is due or
(2) If the moving party is precluded by physical disability, mental incapacity, indigency, misrepresentation of another party, or other compelling reason from filing a motion

before the payment is due, then promptly after the moving party is no longer so precluded.

(b) A past due child support payment which is vested pursuant to G.S. 50-13.10(a) is entitled, as a judgment, to full faith and credit in this State and any other state, with the full force, effect, and attributes of a judgment of this State, except that no arrearage shall be entered on the judgment docket of the clerk of superior court or become a lien on real estate, nor shall execution issue thereon, except as provided in G.S. 50-13.4(f)(8) and (10).

(c) As used in this section, "child support payment" includes all payments required by court or administrative order in civil actions and expedited process proceedings under this Chapter, by court order in proceedings under Chapter 49 of the General Statutes, and by agreements entered into and approved by the court under G.S. 110-132 or G.S. 110-133.

(d) For purposes of this section, a child support payment or the relevant portion thereof, is not past due, and no arrearage accrues:

(1) From and after the date of the death of the minor child for whose support the payment, or relevant portion, is made;
(2) From and after the date of the death of the supporting party;
(3) During any period when the child is living with the supporting party pursuant to a valid court order or to an express or implied written or oral agreement transferring primary custody to the supporting party;
(4) During any period when the supporting party is incarcerated, is not on work release, and has no resources with which to make the payment.

(e) When a child support payment that is to be made to the State Child Support Collection and Disbursement Unit is not received by the Unit when due, the payment is not a past due child support payment for purposes of this section, and no arrearage accrues, if the payment is actually made to and received on time by the party entitled to receive it and that receipt is evidenced by a canceled check, money order, or contemporaneously executed and dated written receipt. Nothing in this section shall affect the duties of the clerks or the IV-D agency under this Chapter or Chapter 110 of the General Statutes with respect to payments not received by the Unit on time, but the court, in any action to enforce such a payment, may enter an order directing the clerk or the IV-D agency to enter the payment on the clerk's or IV-D agency's records as having been made on time, if the court finds that the payment was in fact received by the party entitled to receive it as provided in this subsection.

Notes

See also G.S. 50-13.7 (prospective modification of child support orders).

G.S. 50-13.10 was enacted in 1987 to comply with the requirements of the Bradley Amendment (42 U.S.C. § 666(a)(9)(C)). *See* Craig v. Craig, 103 N.C. App. 615, 406 S.E.2d 656 (1991). Past due child support payments that are vested under G.S. 50-13.10 or a similar statute of a sister state are entitled to full faith and credit under the United States Constitution. *See* Fleming v. Fleming, 49 N.C. App. 345, 271 S.E.2d 584 (1980).

An order modifying child support is not retroactive if it relates only to payments that accrued after the date a motion seeking modification was filed. *See* Hill v. Hill, 335 N.C. 140, 435 S.E.2d 766 (1993); Mackins v. Mackins, 114 N.C. App. 538, 442 S.E.2d 352 (1994).

When a court modifies a child support order under G.S. 50-13.7, it may make the modification (increase or decrease in child support payments) retroactive to the date the motion for modification was filed. *See* Spencer v. Spencer, 133 N.C. App. 38, 514 S.E.2d 283 (1999); *cf.* Barham v. Barham, 127 N.C. App. 20, 487 S.E.2d 774 (1997).

G.S. 50-13.10 does not prohibit retroactive modification of a child support award under a temporary or interim order. *See* Sikes v. Sikes, 330 N.C. 595, 411 S.E.2d 588 (1992).

A court must make findings that an incarcerated obligor was not eligible for work release and did not have sufficient income or assets to pay child support before it gives the obligor a credit against his or her child support obligation for the period of time he or she was incarcerated. *See* Orange County *ex rel.* Byrd v. Byrd, 129 N.C. App. 818, 501 S.E.2d 109 (1998).

See also Van Nynatten v. Van Nynatten, 113 N.C. App. 142, 438 S.E.2d 417 (1993); Lawrence v. Nantz, 115 N.C. App. 478, 445 S.E.2d 87 (1994); Biggs v. Greer, 136 N.C. App. 294, 524 S.E.2d 577 (2000).

G.S. 50-13.11. Orders and agreements regarding medical support and health insurance coverage for minor children.

(a) The court may order a parent of a minor child or other responsible party to provide medical support for the child, or the parties may enter into a written agreement regarding medical support for the child. An order or agreement for medical support for the child may require one or both parties to pay the medical, hospital, dental, or other health care related expenses.

(a1) The court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost. If health insurance is not presently available at a reasonable cost, the court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance becomes available at a reasonable cost. As used in this subsection, health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism. The court may require one or both parties to maintain dental insurance.

(b) The party ordered or under agreement to provide health insurance shall provide written notice of any change in the applicable insurance coverage to the other party.

(c) The employer or insurer of the party required to provide health, hospital, and dental insurance shall release to the other party, upon written request, any information on a minor child's insurance coverage that the employer or insurer may release to the party required to provide health, hospital, and dental insurance.

(d) When a court order or agreement for health insurance is in effect, the signature of either party shall be valid authorization to the insurer to process an insurance claim on behalf of a minor child.

(e) If the party who is required to provide health insurance fails to maintain the insurance coverage for the minor child, the party shall be liable for any health, hospital, or dental expenses incurred from the date of the court order or agreement that would have been covered by insurance if it had been in force.

(f) When a noncustodial parent ordered to provide health insurance changes employment and health insurance coverage is available through the new employer, the obligee shall notify the new employer of the noncustodial parent's obligation to provide health insurance for the child. Upon receipt of notice from the obligee, the new employer shall enroll the child in the employer's health insurance plan.

Notes

See also G.S. 58-51-120 and G.S. 108A-69; North Carolina Child Support Guidelines.

G.S. 50-13.11 was amended in 1997 to comply with federal requirements regarding the inclusion of medical support provisions in all child support orders. *See* S.L. 1997-443 (effective October 1, 1997).

See also Buncombe County *ex rel.* Blair v. Jackson, 138 N.C. App. 284, 531 S.E.2d 240 (2000); Buncombe County *ex rel.* Frady v. Rogers, 148 N.C. App. 401, 559 S.E.2d 227 (2002).

The second sentence of G.S. 50-13.11(a1) was enacted by S.L. 2003-288 and applies to orders entered on or after July 1, 2003. This provision was enacted in response to and abrogates, in part, the court of appeals' decision in Buncombe County *ex rel.* Frady v. Rogers, 148 N.C. App. 401, 559 S.E.2d 227 (2002).

G.S. 50-13.12. Forfeiture of licensing privileges for failure to pay child support or for failure to comply with subpoena issued pursuant to child support or paternity establishment proceedings.

(a) As used in this section, the term:

(1) "Licensing board" means a department, division, agency, officer, board, or other unit of state government that issues hunting, fishing, trapping, drivers, or occupational licenses or licensing privileges.

(2) "Licensing privilege" means the privilege of an individual to be authorized to engage in an activity as evidenced by hunting, fishing, or trapping licenses, regular and commercial drivers licenses, and occupational, professional, and business licenses.

(3) "Obligee" means the individual or agency to whom a duty of support is owed or the individual's legal representative.

(4) "Obligor" means the individual who owes a duty to make child support payments under a court order.

(5) "Occupational license" means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows an obligor to engage in an occupation or profession.

(b) Upon a finding by the district court judge that the obligor is willfully delinquent in child support payments equal to at least one month's child support, or upon a finding that a person has willfully failed to comply with a subpoena issued pursuant to a child support or paternity establishment proceeding, and upon findings as to any specific licensing privileges held by the obligor or held by the person subject to the subpoena, the court may revoke some or all of such privileges until the obligor shall have paid the delinquent amount in full, or, as applicable, until the person subject to the subpoena has complied with the subpoena. The court may stay any such revocation pertaining to the obligor upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall further be conditioned upon the obligor's maintenance of current child support. The court may stay the revocation pertaining to the person subject to the subpoena upon a finding that the person has complied with or is no longer subject to the subpoena. Upon an order revoking such privileges of an obligor that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the obligor is delinquent in child support payments and that the obligor's licensing privileges are revoked until such time as the licensing board receives proof of certification by the clerk that the obligor is no longer delinquent in child support payments. Upon an order revoking such privileges of a person subject to the subpoena that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the person has failed to comply with the subpoena issued pursuant to a child support or paternity establishment proceeding and that the person's licensing privileges are revoked until such time as the licensing board receives proof of certification by the clerk that the person is in compliance with or no longer subject to the subpoena.

(c) An obligor may file a request with the clerk of superior court for certification that the obligor is no longer delinquent in child support payments upon submission of proof satisfactory to the clerk that the obligor has paid the delinquent amount in full. A person whose licensing privileges have been revoked under subsection (b) of this section because of a willful failure to comply with a subpoena may file a request with the clerk of superior court for certification that the person has met the requirements of or is no longer subject to the subpoena. The clerk shall provide a form to be used for a request for certification. If the clerk finds that the obligor has met

the requirements for reinstatement under this subsection, then the clerk shall certify that the obligor is no longer delinquent and shall provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. If the clerk finds that the person whose licensing privileges have been revoked under subsection (b) of this section for failure to comply with a subpoena has complied with or is no longer subject to the subpoena, then the clerk shall certify that the person has met the requirements of or is no longer subject to the subpoena and shall provide a copy of the certification to the person. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board.

(d) If licensing privileges are revoked under this section, the obligor may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over time. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. If the licensing privileges of a person other than the obligor are revoked under this section for failure to comply with a subpoena, the person may petition the district court for reinstatement of the privileges. The court may order the privileges reinstated if the person has complied with or is no longer subject to the subpoena that was the basis for revocation. Upon reinstatement under this subsection, the clerk of superior court shall certify that the obligor is no longer delinquent and provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon reinstatement of the person whose licensing privileges were revoked based on failure to comply with a subpoena, the clerk of superior court shall certify that the person has complied with or is no longer subject to the subpoena. Upon request of the person whose licensing privileges are reinstated, the clerk shall mail a copy of the certification to the appropriate licensing board.

(e) An obligor or other person whose licensing privileges are reinstated under this section may provide a copy of the certification set forth in either subsection (c) or (d) to each licensing agency to which the obligor or other person applies for reinstatement of licensing privileges. Upon request of the obligor or other person, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon receipt of a copy of the certification, the licensing board shall reinstate the license.

(f) Upon receipt of notification by the clerk that an obligor's or other person's licensing privileges are revoked pursuant to this section, the board shall note the revocation on its records and take all necessary steps to implement and enforce the revocation. These steps shall not include the board's independent revocation process pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act, which process is replaced by the court process prescribed by this section. The revocation pertaining to an obligor shall remain in full force and effect until the board receives certification under this section that the obligor is no longer delinquent in child support payments. The revocation pertaining to the person whose licensing privileges were revoked on the basis of failure to comply with a subpoena shall remain in full force and effect until the board receives certification of reinstatement under subsection (d) of this section.

Notes

See also G.S. 110-142.1 and G.S. 110-142.2 (administrative revocation of licenses for failure to pay child support in IV-D cases); G.S. 20-15.1, G.S. 20-17, G.S. 20-24, G.S. 20-24.1, G.S. 20-28, G.S. 20-179.3.

G.S. 50-13.12 generally applies with respect to child support owed on or after July 1, 1996 (or on or after December 1, 1996, in cases involving the revocation of drivers licenses).

G.S. 50-20. Distribution by court of marital property.

* * *

(f) The court shall provide for an equitable distribution without regard to alimony for either party or support of the children of both parties. After the determination of an equitable distribution, the court, upon request of either party, shall consider whether an order for alimony or child support should be modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

* * *

Article 2
Expedited Process for Child Support Cases

G.S. 50-30. Findings; policy; and purpose.

(a) Findings. The General Assembly makes the following findings:

(1) There is a strong public interest in providing fair, efficient, and swift judicial processes for establishing and enforcing child support obligations. Children are entitled to support from their parents, and court assistance is often required for the establishment and enforcement of parental support obligations. Children who do not receive support from their parents often become financially dependent on the State.

(2) The State shall have laws that meet the federal requirements on expedited processes for obtaining and enforcing child support orders for purposes of federal reimbursement under Title IV-D of the Social Security Act, 42 U.S.C. [§ 666] (a)(2). The Secretary of the United States Department of Health and Human Services may waive the expedited process requirement with respect to one or more district court district as defined in G.S. 7A-133 on the basis of the effectiveness and timeliness of support order issuance and enforcement within the district.

(3) The State has a strong financial interest in complying with the expedited process requirement, and other requirements, of Title IV-D of the Social Security Act, but the State would incur substantial expense in creating statewide an expedited child support process as defined by federal law.

(4) The State's judicial system is largely capable of processing child support cases in a timely and efficient manner and has a strong commitment to an expeditious system.

(5) The substantial expense the State would incur in creating a new system for obtaining and enforcing child support orders would be reduced and better spent by improving the present system.

(b) Purpose and Policy. It is the policy of this State to ensure, to the maximum extent possible, that child support obligations are established and enforced fairly, efficiently, and swiftly through the judicial system by means that make the best use of the State's resources. It is the purpose of this Article to facilitate this policy. The Administrative Office of the Courts and judicial officials in each district court district as defined in G.S. 7A-133 shall make a diligent effort to ensure that child support cases, from the time of filing to the time of disposition, are handled fairly, efficiently, and swiftly. The Administrative Office of the Courts and the State Department of Health and Human Services shall work together to improve procedures for the handling of child support cases in which the State or county has an interest, including all cases that qualify in any respect for federal reimbursement under Title IV-D of the Social Security Act.

Notes

This article was enacted in 1985 to comply with a federal statute (42 U.S.C. § 666(a)(2)) that formerly required the use of administrative or quasi-judicial procedures to establish and enforce paternity and child support orders. The federal statute was subsequently amended to delete that

requirement, but the North Carolina law has not been repealed to reflect the change in federal law.

G.S. 50-31. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) "Child support case" means the part of any civil or criminal action or proceeding, whether intrastate or interstate, that involves a claim for the establishment or enforcement of a child support obligation.

(2) "Dispose" or "disposition" of a child support case means the entry of an order in a child support case that:

a. Dismisses the claim for establishment or enforcement of the child support obligation; or

b. Establishes a child support obligation, either temporary or permanent, and directs how that obligation is to be satisfied; or

c. Orders a particular child support enforcement remedy.

(3) "Expedited process" means a procedure for having child support orders established and enforced by a magistrate or clerk who has been designated as a child support hearing officer pursuant to this Article.

(4) "Federal expedited process requirement" means the provision in Title IV, Part D of the Social Security Act, 42 U.S.C. 666 (a)(2), that requires as a condition of the receipt of federal funds that a state have laws that require the use of federally defined expedited processes for obtaining and enforcing child support orders.

(5) "Filing" means the date the defendant is served with a pleading that seeks establishment or enforcement of a child support obligation, or the date written notice or a pleading is sent to a party seeking establishment or enforcement of a child support obligation.

(6) "Hearing officer" or "child support hearing officer" means a clerk or assistant clerk of superior court or a magistrate who has been designated pursuant to this Article to hear and enter orders in child support cases.

(7) "Initiating party" means the party, the attorney for a party, a child support enforcement agency established pursuant to Title IV, Part D of the Social Security Act, or the clerk of superior court who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.

G.S. 50-32. Disposition of cases within 60 days; extension.

Except where paternity is at issue, in all child support cases the district court judge shall dispose of the case from filing to disposition within 60 days, except that this period may be extended for a maximum of 30 days by order of the court if:

(1) Either party or his attorney cannot be present for the hearing; or

(2) The parties have consented to an extension.

G.S. 50-33. Waiver of expedited process requirement.

(a) State to Seek Waiver. The State Department of Health and Human Services, with the assistance of the Administrative Office of the Courts, shall vigorously pursue application to the United States Department of Health and Human Services for waivers of the federal expedited process requirement.

(b) Districts That Do Not Qualify. In any district court district as defined in G.S. 7A-133 that does not qualify for a waiver of the federal expedited process requirement, an expedited process shall be established as provided in G.S. 50-34.

Notes

This article was enacted in 1985 to comply with a federal statute (42 U.S.C. § 666(a)(2)) that formerly required the use of administrative or quasi-judicial procedures to establish and enforce paternity and child support orders. The federal statute was subsequently amended to delete that requirement, but the North Carolina law has not been repealed to reflect the change in federal law.

G.S. 50-34. Establishment of an expedited process.

(a) Districts Required to Have Expedited Process. In any district court district as defined in G.S. 7A-133 that is required by G.S. 50-33(b) to establish an expedited child support process, the Director of the Administrative Office of the Courts shall notify the chief district court judge and the clerk or clerks of superior court in the district in writing of the requirement. The Director of the Administrative Office of the Courts, the chief district court judge, and the clerk or clerks of superior court in the district shall implement an expedited child support process as provided in this section.

(b) Procedure for Establishing Expedited Process. When a district court district as defined in G.S. 7A-133 is required to implement an expedited process, the Director of the Administrative Office of the Courts, the chief district judge, and the clerk of superior court in an affected county shall determine by agreement whether the child support hearing officer or officers for that county shall be one or more clerks or one or more magistrates. If such agreement has not been reached within 15 days after the notice required by subsection (a) when implementation is required, the Director of the Administrative Office of the Courts shall make the decision. If it is decided that the hearing officer or officers for a county shall be magistrates, the chief district judge, the clerk of superior court, and the Director of the Administrative Office of the Courts shall ensure his or their qualification for the position. If it is decided that the hearing officer or officers for a county shall be the clerk or assistant clerks, the clerk of superior court in the county shall designate the person or persons to serve as hearing officer, and the chief district judge, the clerk of superior court, and the Director of the Administrative Office of the Courts shall ensure his or their qualification for the position.

(c) Public To Be Informed. When an expedited process is to be implemented in a county or district court district as defined in G.S. 7A-133, the chief district court judge, the clerk or clerks of superior court in affected counties in the district, and the Administrative Office of the Courts shall take steps to ensure that attorneys, the general public, and parties to pending child support cases in the county or district are informed of the change in procedures and helped to understand and use the new system effectively.

Notes

See also G.S. 7A-178 and G.S. 7A-183.

This article was enacted in 1985 to comply with a federal statute (42 U.S.C. § 666(a)(2)) that formerly required the use of administrative or quasi-judicial procedures to establish and enforce paternity and child support orders. The federal statute was subsequently amended to delete that requirement, but the North Carolina law has not been repealed to reflect the change in federal law.

The provisions of G.S. 50-34 through G.S. 50-39, however, were never implemented while this federal requirement was in effect and are not currently in effect in any judicial district.

G.S. 50-35. Authority and duties of a child support hearing officer.

A child support hearing officer who is properly qualified and designated under this Article has the following authority and responsibilities in all child support cases:

(1) To conduct hearings and to ensure that the parties' due process rights are protected;
(2) To take testimony and establish a record;
(3) To evaluate evidence and make decisions regarding the establishment or enforcement of child support orders;
(4) To accept and approve voluntary acknowledgments of support liability and stipulated agreements setting the amount of support obligations;
(5) To accept and approve voluntary acknowledgments and affirmations of paternity;
(6) Except as otherwise provided in this Article, to enter child support orders that have the same force and effect as orders entered by a district court judge;
(7) To enter temporary child support orders pending the resolution of unusual or complicated issues by a district court judge;
(8) To enter default orders; and
(9) To subpoena witnesses and documents.

Notes

See also G.S. 7A-178 and G.S. 7A-183.

This article was enacted in 1985 to comply with a federal statute (42 U.S.C. § 666(a)(2)) that formerly required the use of administrative or quasi-judicial procedures to establish and enforce paternity and child support orders. The federal statute was subsequently amended to delete that requirement, but the North Carolina law has not been repealed to reflect the change in federal law.

The provisions of G.S. 50-34 through G.S. 50-39, however, were never implemented while this federal requirement was in effect and are not currently in effect in any judicial district.

G.S. 50-36. Child support procedures in districts with expedited process.

(a) Scheduling of Cases. The procedures of this section shall apply to all child support cases in any district court district as defined in G.S. 7A-133 or county in which an expedited process has been established. All claims for the establishment or enforcement of a child support obligation, whether the claim is made in a separate action or as part of a divorce or any other action, shall be scheduled for hearing before the child support hearing officer. The initiating party shall send a notice of the date, time, and place of the hearing to all other parties. Service of process shall be made and notices given as provided by G.S. 1A-1, Rules of Civil Procedure.

(b) Place of Hearing. The hearing before the child support hearing officer need not take place in a courtroom, but shall be conducted in an appropriate judicial setting.

(c) Hearing Procedures. The hearing of a case before a child support officer is without a jury. The rules of evidence applicable in the trial of civil actions generally are observed; however, the hearing officer may require the parties to produce and may consider financial affidavits, State and federal tax returns, and other financial or employment records. Except as otherwise provided in this Article, the hearing officer shall determine the parties' child support rights and obligations and enter an appropriate order based on the evidence and the child support laws of the State. All parties shall be provided with a copy of the order.

(d) Record of Proceeding. The record of a proceeding before a child support hearing officer shall consist of the pleadings filed in the child support case, documentation of proper service or notice or waiver, and a copy of the hearing officer's order. No verbatim recording or transcript shall be required or provided at State expense.

(e) Transfer to District Court Judge. Upon his own motion or upon motion of any party, the hearing officer shall transfer a case for hearing before a district court judge when the case involves:

(1) A contested paternity action;
(2) A custody dispute;

(3) Contested visitation rights;
(4) The ownership, possession, or transfer of an interest in property to satisfy a child support obligation; or
(5) Other complex issues.

Upon ordering such a transfer, except in cases of contested paternity, the hearing officer shall also enter a temporary order that provides for the payment of a money amount or otherwise addresses the child's need for support pending the resolution of the case by the district court judge. The chief district court judge shall establish a procedure for such transferred cases to be given priority for hearing before a district court judge.

Notes

See also G.S. 7A-178 and G.S. 7A-183.

This article was enacted in 1985 to comply with a federal statute (42 U.S.C. § 666(a)(2)) that formerly required the use of administrative or quasi-judicial procedures to establish and enforce paternity and child support orders. The federal statute was subsequently amended to delete that requirement, but the North Carolina law has not been repealed to reflect the change in federal law.

The provisions of G.S. 50-34 through G.S. 50-39, however, were never implemented while this federal requirement was in effect and are not currently in effect in any judicial district.

G.S. 50-37. Enforcement authority of child support hearing officer; contempt.

When a child support case is before a child support hearing officer for enforcement of a child support order, the hearing officer has the same authority that a district court judge would have, except in cases of contempt. Orders that commit a party to jail for civil or criminal contempt for the nonpayment of child support, or for otherwise failing to comply with a child support order, may be entered only by a district court judge. When it appears to a hearing officer that there is probable cause for finding such contempt in a case before the child support hearing officer and that no other enforcement remedy would be effective or sufficient, the hearing officer shall enter an order finding probable cause and referring the case for hearing before a district court judge. The order may indicate the amount of payment the responsible parent may make, or other action he may take, or both, to comply with the child support order. If proof of compliance is made to the hearing officer within a time specified in the order, the hearing officer may cancel the referral of the contempt case to district court. Except as specifically limited by this section, a clerk or magistrate acting as a child support hearing officer retains all of the contempt powers he or she otherwise has by virtue of being a clerk or magistrate.

Notes

See also G.S. 7A-178 and G.S. 7A-183.

This article was enacted in 1985 to comply with a federal statute (42 U.S.C. § 666(a)(2)) that formerly required the use of administrative or quasi-judicial procedures to establish and enforce paternity and child support orders. The federal statute was subsequently amended to delete that requirement, but the North Carolina law has not been repealed to reflect the change in federal law.

The provisions of G.S. 50-34 through G.S. 50-39, however, were never implemented while this federal requirement was in effect and are not currently in effect in any judicial district.

G.S. 50-38. Appeal from orders of the child support hearing officer.

(a) Appeal; Hearing De Novo. Any party may appeal an order of a child support hearing officer for a hearing de novo before a district court judge by giving notice of appeal at the hearing

or in writing within 10 days after entry of judgment. Upon appeal noted, the clerk of superior court shall place the case on the civil issue docket of the district court. The chief district court judge shall establish a procedure for such transferred cases to be given priority for hearing before a district court judge. Unless appealed from, the order of the hearing officer is final.

(b) Order Not Stayed Pending Appeal. Appeal from an order of a child support hearing officer does not stay the execution or enforcement of the order unless, on application of the appellant, a district court judge orders such a stay.

Notes

This article was enacted in 1985 to comply with a federal statute (42 U.S.C. § 666(a)(2)) that formerly required the use of administrative or quasi-judicial procedures to establish and enforce paternity and child support orders. The federal statute was subsequently amended to delete that requirement, but the North Carolina law has not been repealed to reflect the change in federal law.

The provisions of G.S. 50-34 through G.S. 50-39, however, were never implemented while this federal requirement was in effect and are not currently in effect in any judicial district.

G.S. 50-39. Qualifications of child support hearing officer.

(a) Qualifications. A clerk or assistant clerk of superior court or a magistrate, to be designated and serve as a child support hearing officer, shall satisfy each of the following qualifications:

(1) Be at least 21 years of age and not older than 70 years of age, and have a high school degree or its equivalent.
(2) Be qualified by training and temperament to be effective in relating to parties in child support cases and in conducting hearings fairly and efficiently.
(3) Be certified by the Administrative Office of the Courts as having completed the training required by subsection (b).
(4) Establish that he has one of the following qualifications;
    a. Election or appointment as the clerk of superior court; or
    b. Three years experience as an assistant clerk of superior court working in child support or related matters; or
    c. Six years experience as an assistant clerk of superior court; or
    d. Four years experience as a magistrate whose duties have included, in substantial part, the disposition of civil matters; or
    e. Pursuant to G.S. 7A-171.1, five to seven years eligibility for pay as a magistrate; or
    f. Three years experience working in the field of child support enforcement or a related field.

(b) Training Required. Before a clerk or assistant clerk or a magistrate may conduct hearings as a child support hearing officer he must satisfactorily complete a course of instruction in the conduct of such hearings established by the Administrative Office of the Courts. The Administrative Office of the Courts shall establish a course in the conduct of such hearings. The Administrative Office of the Courts may contract with qualified educational organizations to conduct the course of instruction and must reimburse the clerks or magistrates attending for travel and subsistence incurred in taking such training.

Notes

See also G.S. 7A-178 and G.S. 7A-183.

This article was enacted in 1985 to comply with a federal statute (42 U.S.C. § 666(a)(2)) that formerly required the use of administrative or quasi-judicial procedures to establish and enforce paternity and child support orders. The federal statute was subsequently amended to delete that

requirement, but the North Carolina law has not been repealed to reflect the change in federal law.

The provisions of G.S. 50-34 through G.S. 50-39, however, were never implemented while this federal requirement was in effect and are not currently in effect in any judicial district.

Article 3
Family Law Arbitration Act

G.S. 50-41. Purpose; short title.

* * *

(b) This Article may be cited as the North Carolina Family Law Arbitration Act.

Notes

The North Carolina Family Law Arbitration Act was enacted in 1999 (S.L. 1999-185) and applies to agreements made on or after October 1, 1999, unless parties by separate agreement after that date state that this Article shall apply to agreements dated before October 1, 1999.

G.S. 50-42. Arbitration agreements made valid, irrevocable, and enforceable.

(a) During, or after marriage, parties may agree in writing to submit to arbitration any controversy, except for the divorce itself, arising out of the marital relationship. Before marriage, parties may agree in writing to submit to arbitration any controversy, except for child support, child custody, or the divorce itself, arising out of the marital relationship. This agreement is valid, enforceable, and irrevocable except with both parties' consent, without regard to the justiciable character of the controversy and without regard to whether litigation is pending as to the controversy.

(b) This Article does not apply to an agreement to arbitrate in which a provision stipulates that this Article does not apply or to any arbitration or award under an agreement in which a provision stipulates that this Article does not apply.

G.S. 50-44. Interim relief and interim measures.

* * *

(b) In all other cases a party shall seek interim measures as described in subsection (d) of this section from the arbitrators. A party has no right to seek interim relief from a court, except that a party to an arbitration governed by this Article may request from the court enforcement of the arbitrators' order granting interim measures and review or modification of any interim measures governing child support or child custody.

* * *

(e) In considering a request for interim relief or enforcement of interim relief, any finding of fact of the arbitrators in the proceeding shall be binding on the court, including any finding regarding the probable validity of the claim that is the subject of the interim relief sought or granted, except that the court may review any findings of fact or modify any interim measures governing child support or child custody.

* * *

G.S. 50-51. Award; costs.

(a) The award shall be in writing, dated and signed by the arbitrators joining in the award, with a statement of the place where the award was made. Where there is more than one arbitrator, the signatures of a majority of the arbitrators suffice, but the reason for any omitted signature shall be stated. The arbitrators shall deliver a copy of the award to each party personally or by registered or certified mail, return receipt requested, or as provided in the agreement. Time of delivery shall be computed from the date of personal delivery or date of mailing.

(b) Unless the parties agree otherwise, the award shall state the reasons upon which it is based.

(c) Unless the parties agree otherwise, the arbitrators may award interest as provided by law.

* * *

(f) Costs:

(1) Unless the parties otherwise agree, awarding of costs of an arbitration shall be in the arbitrators' discretion.

(2) In making an award of costs, the arbitrators may include any or all of the following as costs:

a. Fees and expenses of the arbitrators, expert witnesses, and translators;

b. Fees and expenses of counsel and of an institution supervising the arbitration, if any;

c. Any other expenses incurred in connection with the arbitration proceedings;

d. Sanctions awarded by the arbitrators or the court, including those provided by N.C.R.Civ.P. 11 and 37; and

e. Costs allowed by Chapters 6 and 7A of the General Statutes.

(3) In making an award of costs, the arbitrators shall specify each of the following:

a. The party entitled to costs;

b. The party who shall pay costs;

c. The amount of costs or method of determining that amount; and

d. The manner in which costs shall be paid.

(g) An award shall be made within the time fixed by the agreement. If no time is fixed by the agreement, the award shall be made within the time the court orders on a party's application. The parties may extend the time in writing either before or after the expiration of this time. A party waives objection that an award was not made within the time required unless that party notifies the arbitrators of his or her objection prior to delivery of the award to that party.

G.S. 50-53. Confirmation of award.

Upon a party's application, the court shall confirm an award, unless within time limits imposed under G.S. 50-54 through G.S. 50-56 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in G.S. 50-54 through G.S. 50-56. The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.

G.S. 50-54. Vacating an award.

(a) Upon a party's application, the court shall vacate an award for any of the following reasons:

* * *

(6) The court determines that the award for child support or child custody is not in the best interest of the child. The burden of proof at a hearing under this subdivision is on the party seeking to vacate the arbitrator's award;

* * *

(b) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. If the application is predicated on corruption, fraud, or other undue means, it shall be made within 90 days after these grounds are known or should have been known.

(c) In vacating an award on grounds other than stated in subdivision (5) of subsection (a) of this section, the court may order a rehearing before arbitrators chosen as provided in the agreement, or in the absence of a provision regarding the appointment of arbitrators, by the court in accordance with G.S. 50-45, except in the case of a vacated award for child support or child custody in which case the court may proceed to hear and determine all such issues. The time

within which the agreement requires an award to be made applies to the rehearing and commences from the date of the order.

* * *

G.S. 50-56. Modification of award for alimony, postseparation support, child support, or child custody based on substantial change of circumstances.

(a) A court or the arbitrators may modify an award for postseparation support, alimony, child support, or child custody under conditions stated in G.S. 50-13.7 and G.S. 50-16.9 in accordance with procedures stated in subsections (b) through (f) of this section.

* * *

(c) An award by arbitrators for child support or child custody may be modified if a court order for child support or child custody could be modified pursuant to G.S. 50-13.7.

(d) If an award for modifiable postseparation support or alimony, or an award for child support or child custody, has not been confirmed pursuant to G.S. 50-53, upon the parties' agreement these matters may be submitted to arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to this modified award.

(e) If an award for modifiable postseparation support or alimony, or an award for child support or child custody has been confirmed pursuant to G.S. 50-53, upon the parties' agreement and joint motion, the court may remit these matters to arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to this modified award.

(f) Except as otherwise provided in this section, the provisions of G.S. 50-55 apply to modifications or corrections of awards for postseparation support, alimony, child support, or child custody.

Notes

See also G.S. 50-13.7 and G.S. 50-13.10.

G.S. 50-61. Article not retroactive.

This Article applies to agreements made on or after October 1, 1999, unless parties by separate agreement after that date state that this Article shall apply to agreements dated before October 1, 1999.

G.S. 50-62. Construction; uniformity of interpretation.

Certain provisions of this Article have been adapted from the Uniform Arbitration Act in force in this State, the North Carolina International Commercial Arbitration and Conciliation Act, and Chapters 50, 50A, 50B, 51, 52, and 52C of the General Statutes. This Article shall be construed to effect its general purpose to make uniform provisions of these Acts and Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes.

Chapter 50A
Uniform Child-Custody Jurisdiction and Enforcement Act

Article 2
Uniform Child-Custody Jurisdiction and Enforcement Act

Part 1
General Provisions

G.S. 50A-102. Definitions.

In this Article:

* * *

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

* * *

Notes

The Uniform Interstate Family Support Act (UIFSA) and federal Full Faith and Credit for Child Support Orders Act (FFCCSOA)—*not* the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)—govern jurisdiction in child support cases (including jurisdiction with respect to a claim for child support joined in a civil action involving child custody or visitation). *See* G.S. Chapter 52C; 28 U.S.C. § 1738B. Unlike child custody proceedings (which are *in rem*), child support proceedings are *in personam* and require personal jurisdiction over a parent who is ordered to pay support for his or her child. The fact that a court has jurisdiction to enter, enforce, or modify a child custody order does not necessarily mean that it has ancillary jurisdiction to enter, enforce, or modify a child support order involving the same parent and child.

Chapter 50B
Domestic Violence

G.S. 50B-3. Relief.

(a) The court . . . may grant any protective order to bring about a cessation of acts of domestic violence. The orders may:

* * *

(3) Require a party to provide a spouse and his or her children suitable alternate housing;

* * *

(6) Order either party to make payments for the support of a minor child as required by law;

* * *

(10) Award attorney's fees to either party;

* * *

(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed one year, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed. . . .

* * *

Chapter 52
Powers and Liabilities of Married Persons

G.S. 52-10.1. Separation agreements.

Any married couple is hereby authorized to execute a separation agreement not inconsistent with public policy which shall be legal, valid, and binding in all respects; provided, that the separation agreement must be in writing and acknowledged by both parties before a certifying officer as defined in G.S. 52-10(b). Such certifying officer must not be a party to the contract. This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by a husband and wife, or their attorneys, may be construed to constitute a separation agreement between such husband and wife.

Notes

A parent's duty to pay child support pursuant to a valid separation agreement is not dependent on the other spouse's compliance with other provisions of the separation agreement related to visitation or matters unrelated to child support. *See* Nisbet v. Nisbet, 102 N.C. App. 232, 402 S.E.2d 151 (1991). *See also* Brinkley v. Brinkley, 135 N.C. App. 608, 522 S.E.2d 90 (1999).

The existence of a separation agreement containing provisions for child support does not prevent a parent from commencing a civil action seeking child support. *See* Powers v. Parisher, 104 N.C. App. 400, 409 S.E.2d 725 (1991); Bottomley v. Bottomley, 82 N.C. App. 231, 346 S.E.2d 317 (1986).

In Fuchs v. Fuchs, 260 N.C. 635, 133 S.E.2d 487 (1963), the North Carolina Supreme Court held that the amount of child support payable under a valid *unincorporated* separation agreement is presumed to be just and reasonable and that, absent evidence sufficient to rebut this presumption, a court is required to enter an order for child support in the amount payable under the separation agreement if a party files a civil action seeking child support. In Pataky v. Pataky, ___ N.C. App. ___, ___ S.E.2d ___ (2003), the court of appeals held that *Fuchs* remains good law despite the subsequent adoption of North Carolina's child support guidelines and that the child support guidelines do not apply in cases involving initial establishment of a child support order if child support has been determined by the parties under a valid *unincorporated* separation agreement and a party has not rebutted the presumption established under *Fuchs*.

A court may modify the child support provisions of a separation agreement incorporated into a court order on or after January 11, 1983, to the same extent as it may modify a child support order entered by the court. *See* Powers v. Parisher, 104 N.C. App. 400, 409 S.E.2d 725 (1991); Rose v. Rose, 108 N.C. App. 90, 422 S.E.2d 446 (1992). A court may not modify child support provisions in a separation agreement that has not been incorporated into a court order. *See* Morrow v. Morrow, 103 N.C. App. 787, 407 S.E.2d 286 (1991). Child support provisions in a separation agreement that has not been incorporated into a court order may be enforced by a court in the same manner as other contractual provisions between spouses but may not be enforced through contempt proceedings. *See* Morrow v. Morrow, 103 N.C. App. 787, 407 S.E.2d 286 (1991); *cf.* Rose v. Rose, 66 N.C. App. 161, 310 S.E.2d 626 (1984) (support provisions in unincorporated separation agreement may be enforced through specific performance and indirectly by contempt).

Unexecuted child support provisions included in an unincorporated separation agreement are unenforceable if the parties resume marital relations. *See* Campbell v. Campbell, 234 N.C.188, 66 S.E.2d 672 (1951). Child support provisions included in a court order (or a separation agreement that has been incorporated into a court order), however, are not invalidated by the parties'

subsequent resumption of marital relations. *See* Walker v. Walker, 59 N.C. App. 485, 297 S.E.2d 125 (1982).

Chapter 52A
Uniform Reciprocal Enforcement of Support Act

G.S. 52A-1. Short title.

This Chapter may be cited as the "Uniform Reciprocal Enforcement of Support Act." [Repealed effective Jan. 1, 1996. See note.]

Notes

North Carolina's Uniform Reciprocal Enforcement of Support Act (URESA) statute was enacted in 1951, revised in 1975, and repealed effective January 1, 1996. 1995 N.C. Sess. Laws ch. 538, sec. 7(a). Interstate child support proceedings filed on or after January 1, 1996, are governed by the Uniform Interstate Family Support Act (UIFSA), which is codified as Chapter 52C of the General Statutes. Section 7(b) of 1995 N.C. Sess. Laws ch. 538 provides that the repeal of G.S. Chapter 52A does not affect pending actions, right, duties, or liabilities based on URESA, nor alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under URESA. After January 1, 1996, G.S. Ch. 52A shall be treated as remaining in full force and effect for the purpose of sustaining any pending or vested rights as of January 1, 1996, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities under URESA.

Chapter 52B
Uniform Premarital Agreement Act

G.S. 52B-4. Content.

* * *

(b) The right of a child to support may not be adversely affected by a premarital agreement.

Chapter 52C
Uniform Interstate Family Support Act

Article 1
General Provisions

G.S. 52C-1-100. Short title.

This Chapter may be cited as the Uniform Interstate Family Support Act.

Notes

The federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), enacted October 11, 1994, and amended August 22, 1996, is similar, but not identical, to the Uniform Interstate Family Support Act (UIFSA). *See* 28 U.S.C. § 1738B. To the extent that UIFSA is inconsistent with FFCCSOA, the provisions of FFCCSOA control. *See* Kelly v. Otte, 123 N.C. App. 585, 474 S.E.2d 131 (1996); Tepper v. Hoch, 140 N.C. App. 354, 536 S.E.2d 654 (2000).

The 1966 federal welfare reform law required North Carolina and other states to enact UIFSA. UIFSA has now been enacted by all fifty states and the District of Columbia.

The official comments to UIFSA written by the National Conference of Commissioners on Uniform State Laws (NCCUSL) are not included in this publication. NCCUSL's official comments to UIFSA are simply an interpretation of the law by the act's drafters—they are not substantive law.

UIFSA governs the post–January 1, 1996, recognition, enforcement, and modification of support orders entered *before or after* January 1, 1996. *See* Welsher v. Rager, 127 N.C. App. 521, 491 S.E.2d 661 (1997). But the effect of a pre–January 1, 1996, child support order entered under URESA on a child support order entered by a court of another state is governed by the law that was in effect at the time the order was entered (URESA, not UIFSA). *See* Twaddell v. Anderson, 136 N.C. App. 56, 523 S.E.2d 710 (1999).

Proceedings under UIFSA are civil, not criminal, actions (even if the district attorney's office represents the obligee in the proceeding).

G.S. 52C-1-101. Definitions.

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six-months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this State.

(6) "Income-withholding order" means an order or other legal process directed to a payer of income to withhold support from the income of the obligor.

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
b. A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
c. An individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual, or the estate of a decedent:

a. Who owes or is alleged to owe a duty of support;
b. Who is alleged but has not been adjudicated to be a parent of a child; or
c. Who is liable under a support order.

(14) "Register" means to file a support order or judgment determining paternity in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.

(15) "Registering tribunal" means a tribunal in which a support order is registered.

(16) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) "Responding tribunal" means the authorized tribunal in a responding state.

(18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

a. An Indian tribe; and
b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) "Support enforcement agency" means a public official or agency authorized to seek:

a. Enforcement of support orders or duties of support;
b. Establishment or modification of child support;
c. Determination of parentage; or
d. To locate obligors or their assets.

(21) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrears, or reimbursement, and may include related costs and fees, interest, income withholding, attorneys' fees, and other relief.

(22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine paternity, except that, for matters heard in this State, tribunal means the General Court of Justice, District Court Division.

Notes

Switzerland is not a "state" under the Uniform Interstate Family Support Act (UIFSA) because it has not enacted a reciprocal child support law similar to the Uniform Reciprocal Enforcement Act (URESA) or UIFSA. *See* Haker-Volkening v. Haker, 143 N.C. App. 688, 547 S.E.2d 127 (2001).

The United Kingdom is a "state" under UIFSA because it has enacted a reciprocal child support law similar to URESA or UIFSA. *See* Foreman v. Foreman, 144 N.C. App. 582, 550 S.E.2d 792 (2001).

Child support orders entered by courts of foreign countries that are not "states" under UIFSA may be enforced by North Carolina courts in a non-UIFSA proceeding under the doctrine of comity. *See* Southern v. Southern, 43 N.C. App. 159, 258 S.E.2d 422 (1979); State *ex rel.* Desselberg v. Peele, 136 N.C. App. 206, 523 S.E.2d 125 (1999).

See also John L. Saxon, "International Establishment and Enforcement of Family Support," *Family Law Bulletin No. 10* (Chapel Hill: School of Government, The University of North Carolina at Chapel Hill, 1999).

G.S. 52C-1-102. District court has jurisdiction under this Act.

The General Court of Justice, District Court Division is the court authorized to hear matters under this Act.

G.S. 52C-1-103. Remedies.

Remedies provided by this Act are cumulative and do not affect the availability of remedies under other law.

Notes

A judgment for past-due child support that is entered by a court of another state and entitled to full faith and credit under the U.S. Constitution may be enforced by a North Carolina court through the Uniform Interstate Family Support Act (UIFSA) or through a non-UIFSA civil action to "domesticate" the out-of-state judgment. *See* Pieper v. Pieper, 108 N.C. App. 722, 425 S.E.2d 435 (1993).

Article 2
Jurisdiction

Part 1
Extended Personal Jurisdiction

G.S. 52C-2-201. Bases for jurisdiction over nonresident.

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) The individual is personally served with a summons and complaint within this State;
(2) The individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
(3) The individual resided with the child in this State;
(4) The individual resided in this State and provided prenatal expenses or support for the child;
(5) The child resides in this State as a result of the acts or directives of the individual;
(6) The individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse;
(7) The individual asserted paternity in an affidavit which has been filed with the clerk of superior court; or
(8) There is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

Notes

See also G.S. 1-75.4 and G.S. 49-17 (long arm jurisdiction in paternity and child support cases); G.S. 52C-4-401 (jurisdiction to establish child support order).

In order to assert long arm jurisdiction under this section, the court must determine (1) that there is a sufficient statutory basis for asserting long arm jurisdiction, *and* (2) that there are sufficient, minimum contacts between the defendant and North Carolina that justify the exercise of long arm jurisdiction. *See* Dillon v. Numismatic Funding Corp., 291 N.C. 674, 231 S.E.2d 629 (1977). In most long arm Uniform Interstate Family Support Act (UIFSA) proceedings filed with district courts in North Carolina, the petitioner will be a current North Carolina resident, but there

is no jurisdictional or legal requirement under this section or other North Carolina child support statutes that the petitioner in a long arm UIFSA proceeding reside in the forum state (here, North Carolina). Instead, jurisdiction in long arm proceedings depends solely on the nonresident defendant's contacts with the forum state.

See Butler v. Butler, 152 N.C. App. 74, 566 S.E.2d 707 (2002) (a North Carolina court properly exercised long arm personal jurisdiction under this section over a defendant who resided in the Bahamas with respect to a civil action seeking alimony and child support because the defendant had resided with the children in North Carolina and the children resided in North Carolina as a result of the defendant's acts or directives).

Federal law requires child support enforcement (IV-D) agencies to use long arm proceedings to establish paternity and child support orders in interstate cases (that is, cases in which the custodial parent and child live in State A and the putative father or obligor lives in State B) when it is feasible to do so. *See* 45 C.F.R. 303.7(b)(1).

G.S. 52C-2-202. Procedure when exercising jurisdiction over nonresident.

A court of this State exercising personal jurisdiction over a nonresident under G.S. 52C-2-201 may apply G.S. 52C-3-315 to receive evidence from another state, and G.S. 52C-3-317 to obtain discovery through a tribunal of another state. In all other respects, Articles 3 through 7 of this Chapter do not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this Chapter.

Notes

A civil action under G.S. 52C-2-201 and G.S. 52C-2-202 is referred to as a "one state" (rather than a "two state," or interstate) Uniform Interstate Family Support Act (UIFSA) proceeding because the forum state's court asserts long arm jurisdiction over a nonresident defendant, applies the forum state's law with respect to paternity and child support issues, and enters an order determining paternity or child support with little or no assistance from a court in the responding state. The responding state's courts or tribunals are not significantly involved in these one state UIFSA proceedings and most of the UIFSA provisions (other than special discovery and evidentiary rules) that apply to two state UIFSA proceedings do not apply.

Part 2
Proceedings Involving Two Or More States

G.S. 52C-2-203. Initiating and responding tribunal of state.

Under this Chapter, a tribunal of this State may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

Notes

See also G.S. 52C-1-102 (district court is designated as the "tribunal" authorized to exercise jurisdiction in Uniform Interstate Family Support Act [UIFSA] proceedings in North Carolina); G.S. 52C-3-304 (duties of initiating tribunal); G.S. 52C-3-305 (duties and powers of responding tribunal); G.S. 52C-3-306 (duty of an "inappropriate" tribunal).

A petitioner who resides in North Carolina may initiate a "two state" UIFSA proceeding against a defendant who lives in another state by filing a UIFSA petition directly with the responding tribunal in the other state rather than filing the petition with an initiating tribunal in North Carolina. *See* G.S. 52C-3-301(c).

G.S. 52C-2-204. Simultaneous proceedings in another state.

(a) A tribunal of this State may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(1) The petition or comparable pleading in this State is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
(2) The contesting party timely challenges the exercise of jurisdiction in the other state; and
(3) If relevant, this State is the home state of the child.

(b) A tribunal of this State may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(1) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this State for filing a responsive pleading challenging the exercise of jurisdiction by this State;
(2) The contesting party timely challenges the exercise of jurisdiction in this State; and
(3) If relevant, the other state is the home state of the child.

Notes

See also G.S. 52C-1-101(4) (defining child's "home state") and G.S. 52C-4-401 (jurisdiction to establish support order).

G.S. 52C-2-205. Continuing, exclusive jurisdiction.

(a) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order:

(1) As long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
(2) Until all of the parties who are individuals have filed written consents with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this State issuing a child support order consistent with the law of this State may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this Chapter.

(c) If a child support order of this State is modified by a tribunal of another state pursuant to a law substantially similar to this Chapter, a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:

(1) Enforce the order that was modified as to amounts accruing before the modification;
(2) Enforce nonmodifiable aspects of that order; and
(3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this Chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

Notes

See also G.S. 52C-2-207 ("one order" rules) and G.S. 52C-6-611 (prohibiting modification of recognized child support order when the issuing tribunal retains continuing, exclusive jurisdiction); federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B (adopting continuing, exclusive jurisdiction provisions similar to those in the Uniform Interstate Family Support Act [UIFSA]).

Under UIFSA, continuing, exclusive jurisdiction (CEJ) over spousal support orders is different from CEJ over child support orders. In the case of spousal support orders, the tribunal that enters a spousal support order retains CEJ "throughout the existence of the support obligation" and regardless of the current residence of the parties. *See* G.S. 52C-2-205(f). A North Carolina court, therefore, may not modify a spousal support order entered by a court or tribunal of another state (because the issuing tribunal retains CEJ). *See* G.S. 52C-2-206(c). When a family support order addresses both spousal support and child support, G.S. 52C-2-205(f) applies with respect to the order's provisions for spousal support, and the remaining CEJ provisions of this section apply with respect to the order's provisions for child support.

Continuing, exclusive jurisdiction is an important, confusing, and often-misunderstood concept. The provisions of this section regarding CEJ and child support orders must be read in conjunction with the provisions of G.S. 52C-2-207 (recognition of only one "controlling" child support order) and G.S. 52C-6-611 (prohibiting modification of the one recognized child support order when the issuing tribunal retains CEJ). A court cannot be said to have CEJ unless it has entered a valid child support order. If a court has entered a valid child support order, CEJ depends primarily on the current residence of the obligor, individual obligee, and child. The fact that an issuing tribunal has CEJ over a child support order under this section does not necessarily mean that its order is the one "controlling" child support order entitled to recognition under G.S. 52C-2-207. The fact that an issuing tribunal has lost CEJ under this section does not necessarily mean that its order can no longer be enforced prospectively or with respect to vested, past-due child support arrearages by the issuing tribunal or by tribunals in other states. The fact that an issuing tribunal has lost CEJ under this section does not necessarily mean that another particular tribunal (as opposed to *some* other tribunal) has jurisdiction to modify that order under G.S. 52C-6-611.

A tribunal that has entered a child support order (the "issuing tribunal" loses CEJ when *all* of the *individual* parties to the child support proceeding (the obligor, the individual obligee to whom support is owed, *and* the child or children for whom support is owed) no longer reside in the issuing state *or* when all of the individual parties have filed a *written* consent with the issuing tribunal authorizing a tribunal in another state to assume CEJ and modify the order. *See* G.S. 52C-2-205(a). G.S. 52C-2-205(b) and (c) provide that an issuing tribunal also loses CEJ when its order has been modified by a tribunal of another state pursuant to UIFSA. Reading these three provisions together, it might be argued that an issuing tribunal retains continuing jurisdiction (but not continuing, *exclusive* jurisdiction) to modify a child support order it previously entered when (a) *neither* of the individual parties *nor* the child lives in the issuing state, (b) the individual parties have not filed written consent for another state's tribunal to assume CEJ, and (c) a tribunal of another state has not yet modified the issuing tribunal's child support order pursuant to UIFSA. The official comments to UIFSA, however, take the position that an issuing tribunal does not have jurisdiction to modify its order when neither of the individual parties nor the child still resides in the issuing state. *See also* Jurado v. Brashear, 782 So.2d 575 (La. 2001) (holding that Louisiana court lost jurisdiction to modify its child support order when the individual obligee, child, and obligor no longer resided in Louisiana).

A Texas court that entered a child support order retained CEJ because the individual obligee and child still resided in Texas. When the Texas order was registered for enforcement in North

Carolina, the North Carolina court was required to enforce the Texas order under UIFSA but lacked jurisdiction to modify the order because the Texas court retained CEJ. *See* Hinton v. Hinton, 128 N.C. App. 637, 496 S.E.2d 409 (1998).

G.S. 52C-2-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.

(a) A tribunal of this State may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this State having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply G.S. 52C-3-315 to receive evidence from another state and G.S. 52C-3-317 to obtain discovery through a tribunal of another state.

(c) A tribunal of this State which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

Notes

See also G.S. 52C-2-205 (continuing, exclusive jurisdiction).

Part 3
Reconciliation of Multiple Orders

G.S. 52C-2-207. Recognition of controlling child support order.

(a) If a proceeding is brought under this Chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this Chapter, and two or more child support orders have been issued by tribunals of this State or another state with regard to the same obligor and child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal controls and must be so recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this State having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

(c) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this State, a party may request a tribunal of this State to determine which order controls and must be so recognized under subsection (b) of this section. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by a certified copy of every support order in the effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section is the tribunal that has continuing, exclusive jurisdiction under G.S. 52C-2-205.

(e) A tribunal of this State which determines by order the identity of the controlling order under subdivision (b)(1) or (2) of this section or which issues a new controlling order under

subdivision (b)(3) of this section shall state in that order the basis upon which the tribunal made its determination.

(f) Within 30 days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

Notes

See also G.S. 52C-1-101(4) (defining "home state"); G.S. 52C-2-205 (continuing, exclusive jurisdiction); federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. § 1738B (adopting "one order" rules similar to those in this section).

Under the Uniform Reciprocal Enforcement of Support Act (URESA), a child support order entered by a responding state generally did not modify or supersede a child support order that was previously entered by a court in another state. As a result, an obligor could be subject to two or more valid child support orders issued by courts of different states. The Uniform Interstate Family Support Act (UIFSA) and FFCCSOA establish a "one order" system under which there will be only one "controlling" order governing an obligor's responsibility to support a particular child (or family of children) at any given time.

UIFSA's rules regarding the "reconciliation" of multiple child support orders apply only when two or more orders require an obligor to support the same child or family of children. They do not apply when one order requires a parent to support one family of children living with obligee A and a second order requires the same parent to support a second family of children living with obligee B.

When multiple child support orders governing an obligor's responsibility to support a particular child or family of children were entered before the enactment of UIFSA and FFCCSOA, UIFSA's and FFCCSOA's one order provisions establish the rules for determining which one, if any, of these orders is now entitled to recognition and *prospective* enforcement as the one controlling order. UIFSA and FFCCSOA, however, do *not* apply "retroactively" to orders entered before UIFSA and FFCCSOA were adopted in the sense that they "retroactively invalidate" a child support order that was validly entered pursuant to URESA or another child support law that was in existence before UIFSA or FFCCSOA were adopted. *Cf.* Wilson County *ex rel.* Egbert v. Egbert, 153 N.C. App. 283, 569 S.E.2d 727 (2002). Nor do UIFSA or FFCCSOA apply "retroactively" in the sense that they affect the validity (or invalidity) of an order that was entered before UIFSA or FFCCSOA was adopted and purported to modify, pursuant to URESA or another child support law that was in existence before UIFSA or FFCCSOA was adopted, a child support order.

If a child support order is entitled to recognition as the one controlling order, no court or tribunal in North Carolina or another state may establish a new child support order governing the obligor's responsibility to support the same child or family of children; courts and tribunals in North Carolina and other states must enforce the controlling order prospectively and with respect to vested, past-due child support arrearages; and no court or tribunal in North Carolina or another state may modify the controlling order unless it has jurisdiction to do so pursuant to UIFSA and FFCCSOA.

When a valid child support order has been entered but the order has been validly modified or superseded or is determined not to be the one controlling order under this section, the order may not be enforced with respect to current or future child support payments or child support payments that accrued after the date it was modified or determined not to be the one controlling order. But the full faith and credit clause of the U.S. Constitution requires that it be enforced with

respect to vested, past-due child support arrearages that accrued prior to the date it was modified or superseded or determined not to be the one controlling order. *See* New Hanover County *ex rel*. Mannthey v. Kilbourne, ___ N.C. App. ___, 578 S.E.2d 610 (2003) (trial court is not required to determine whether a valid, unmodified order that has been registered for enforcement is the "controlling" order when the only issue before the court is enforcement of vested, past-due child support arrearages under the order rather than enforcement of current and future child support). *Cf*. Wilson County *ex rel*. Egbert v. Egbert, 153 N.C. App. 283, 569 S.E.2d 727 (2002).

UIFSA's one order rules are "retroactive" in the sense that they determine whether a child support order entered *before* UIFSA was enacted is *now* entitled to recognition as the one controlling order. They do not, however, apply retroactively in the sense that they retroactively invalidate child support orders that were validly entered (or that validly modified other child support orders) pursuant to URESA or other state child support laws *before* the enactment of UIFSA and FFCCSOA. *See* Welsher v. Rager, 127 N.C. App. 521, 491 S.E.2d 661 (1997); Twaddell v. Anderson, 136 N.C. App. 56, 523 S.E.2d 710 (1999). *See also* John L. Saxon, "Reconciling Multiple Child Support Orders Under UIFSA and FFCCSOA: The *Twaddell*, *Roberts*, and *Dunn* Cases," *Family Law Bulletin No. 11* (Chapel Hill: School of Government, The University of North Carolina at Chapel Hill, 2000).

Before a North Carolina court enters a new child support order, enforces a child support order, or modifies a child support order, the court should first determine whether another court or tribunal in North Carolina or another state has entered a child support order with respect to the obligor's responsibility to support the same child or family of children and, if so, whether the court has jurisdiction under UIFSA and FFCCSOA to enter, enforce, or modify the order or whether it needs to "reconcile" multiple child support orders by determining the one controlling order under this section. If a court or tribunal in another state has already entered an order determining which one of several orders is the one controlling order, the parties are bound by that decision and a North Carolina court must recognize that determination.

If only one valid child support order regarding an obligor's responsibility to support a particular child or family of children has been entered and remains in effect, that order is entitled to recognition under UIFSA and FFCCSOA as the one controlling order even if the issuing tribunal no longer has continuing, exclusive jurisdiction (CEJ). Courts and tribunals in North Carolina and other states must enforce the order and may not modify it unless they have jurisdiction to do so under G.S. 52C-6-611.

When a court or tribunal is reconciling multiple child support orders to determine which one is the controlling order, issues relating to the residence of the individual parties or child (CEJ and home state) are determined based on the residence of the parties or child at the time the controlling order determination is made, *not* the residence of the parties or child when the orders were entered.

This section does not apply to spousal support orders. *See* G.S. 52C-2-205(f).

See also Welsher v. Rager, 127 N.C. App. 521, 491 S.E.2d 661 (1997); Hinton v. Hinton, 128 N.C. App. 637, 496 S.E.2d 409 (1998); Twaddell v. Anderson, 136 N.C. App. 56, 523 S.E.2d 710 (1999); State *ex rel*. Harnes v. Lawrence, 140 N.C. App. 707, 538 S.E.2d 223 (2000).

G.S. 52C-2-208. Multiple child support orders for two or more obligees.

In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this State shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this State.

G.S. 52C-2-209. Credit for payments.

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State.

Notes

This section is similar to a provision in the Uniform Reciprocal Enforcement of Support Act (URESA) that protected an obligor who was subject to multiple child support orders governing his or her responsibility to support a particular child or family of children from having to pay the full amount of support under both orders for the same period of time. *See* G.S. 52A-21 (repealed). If, for example, for the period January 1, 1995, through December 31, 1995, an obligor was required to pay $400 per month in support for Child A under an order entered by a court in State X and was also required to pay $500 per month in support for Child A under an order entered by a North Carolina court, and the obligor in fact paid $400 in support for Child A each month throughout 1995 (regardless of whether the payments were made through the court in State X or through the North Carolina court and regardless of whether the payments were made pursuant to the order entered by the court in State X or pursuant to the North Carolina order), the obligor would be entitled to a credit of $400 per month against his or her child support obligation under both the order entered by the court in State X and the order entered by the North Carolina court. Therefore, his child support obligation under the order entered by the court in State X would be satisfied in full and he would owe $1,200 in child support arrearages under the North Carolina order.

Article 3
Civil Provisions of General Application

G.S. 52C-3-301. Proceedings under this Chapter.

(a) Except as otherwise provided in this Chapter, this Article applies to all proceedings under this Chapter.

(b) This Chapter provides for the following proceedings:

(1) Establishment of an order for spousal support or child support pursuant to Article 4 of this Chapter;
(2) Enforcement of a support order and income withholding order of another state without registration pursuant to Article 5 of this Chapter;
(3) Registration of an order for spousal support or child support of another state or enforcement pursuant to Article 6 of this Chapter;
(4) Modification of an order for child support or spousal support issued by a tribunal of this State pursuant to Article 2, Part 2 of this Chapter;
(5) Registration of an order for child support of another state for modification pursuant to Article 6 of this Chapter;
(6) Determination of paternity pursuant to Article 7 of this Chapter; and
(7) Assertion of jurisdiction over nonresidents pursuant to Article 2, Part 1 of this Chapter.

(c) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this Chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

G.S. 52C-3-302. Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

Notes

See also G.S. 1A-1, Rule 17 (appointment of guardian ad litem on behalf of minor party); G.S. 35A-1221 and G.S. 35A-1224 (the parents of a minor, unemancipated child are the child's natural guardians); G.S. 7B-3509 (minor child is emancipated by marriage but not by giving birth to child out of wedlock).

G.S. 52C-3-303. Application of law of this State.

Except as otherwise provided by this Chapter, a responding tribunal of this State:

(1) Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this State and may exercise all powers and provide all remedies available in those proceedings; and

(2) Shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this State.

Notes

See also G.S. 52C-6-604 (choice of law in Uniform Interstate Family Support Act [UIFSA] proceedings involving registration of out-of-state child support orders); G.S. 52C-6-607 and G.S. 52C-6-610 (choice of law in UIFSA proceedings to enforce registered out-of-state child support order); G.S. 52C-6-611 (choice of law in UIFSA proceedings to modify registered out-of-state child support order).

UIFSA is essentially a procedural (and jurisdictional) statute. UIFSA does not, in and of itself, establish any substantive law governing a parent's responsibility to support his or her child; the nature, scope, or duration of child support obligations; or the remedies for enforcing child support orders. Instead, these matters are governed by general (non-UIFSA) state laws regarding paternity and child support. UIFSA, however, does establish choice of law rules for determining which state's law governs procedural, substantive, and remedial issues in UIFSA proceedings.

North Carolina's paternity and child support statutes do not establish choice of law rules for paternity and child support cases that are not brought under UIFSA. When a district court in North Carolina is acting as a responding tribunal to establish a paternity or child support order on behalf of a nonresident petitioner, the court will generally apply North Carolina's general (non-UIFSA) procedural and substantive law governing paternity and child support to determine whether a party is the parent of a child, whether a party is responsible for supporting a child, the scope and duration of a party's child support obligation, and the amount of the child support obligation (applying the North Carolina Child Support Guidelines).

G.S. 52C-3-304. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by this Chapter, an initiating tribunal of this State shall forward three copies of the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted this act or a law or procedure substantially similar to this act, a tribunal of this State may issue a certificate or other document and make findings required by the law of the responding state. If the responding State is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

Notes

See also G.S. 52C-3-301 (c) (petitioner may file Uniform Interstate Family Support Act [UIFSA] petition directly with responding tribunal rather than filing petition with initiating tribunal).

G.S. 52C-3-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this State receives a petition or comparable pleading from an initiating tribunal or directly pursuant to G.S. 52C-3-301(c) it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this State, to the extent otherwise authorized by law, may do one or more of the following:

(1) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
(3) Order income withholding;
(4) Determine the amount of any arrears, and specify a method of payment;
(5) Enforce orders by civil or criminal contempt, or both;
(6) Set aside property for satisfaction of the support order;
(7) Place liens and order execution on the obligor's property;
(8) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
(9) Issue an order for arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the order for arrest in any local and State computer systems for criminal warrants;
(10) Order the obligor to seek appropriate employment by specified methods;
(11) Award reasonable attorneys' fees and other fees and costs; and
(12) Grant any other available remedy.

(c) A responding tribunal of this State shall include in a support order issued under this Chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this State may not condition the payment of a support order issued under this Chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this State issues an order under this Chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

Notes

G.S. 52C-3-305(b) does not constitute an independent grant of jurisdiction or authority. A North Carolina court has the authority to take the actions specified in G.S. 52C-3-305(b) only to the extent it has jurisdiction under the Uniform Interstate Family Support Act (UIFSA) and federal Full Faith and Credit for Child Support Orders Act (FFCCSOA) and statutory authority (under UIFSA or North Carolina's general paternity and child support laws) to act. For example, a North Carolina court may award attorney fees in a UIFSA proceeding only if the award of attorney fees is authorized by a UIFSA provision other than G.S. 52C-3-305(b) or is authorized by G.S. 50-13.6 or another applicable provision of North Carolina's general paternity and child support laws.

A North Carolina court does not have jurisdiction in a UIFSA proceeding to enter an order regarding the custody or visitation of the child for whom support is owed or to condition the payment of child support upon the custodial parent's allowing the noncustodial parent to visit the child. *See* Pifer v. Pifer, 31 N.C. App. 486, 229 S.E.2d 700 (1976); VanBuren County Dep't of

Social Services v. Swearengin, 118 N.C. App. 324, 455 S.E.2d 161 (1995). *See also* G.S. Chapter 50A (Uniform Child Custody Jurisdiction and Enforcement Act).

G.S. 52C-3-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this State, it shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another state and notify the petitioner where and when the pleading was sent.

G.S. 52C-3-307. Duties of support enforcement agency.

(a) A support enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this Chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) Take all steps necessary to enable an appropriate tribunal in this State or another state to obtain jurisdiction over the respondent;
(2) Request an appropriate tribunal to set a date, time, and place for a hearing;
(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
(4) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;
(5) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and
(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This Chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Notes

See also G.S. 110-128, G.S. 110-129.1, G.S. 110-130, G.S. 110-130.1, G.S. 110-139 (state and local child support enforcement (IV-D) agencies).

See also Sotelo v. Drew, 123 N.C. App. 464, 473 S.E.2d 379 (1996), *aff'd,* 345 N.C. 750, 483 S.E.2d 439 (1997); New York *ex rel.* Andrews v. Paugh, 135 N.C. App. 434, 521 S.E.2d 475 (1999).

G.S. 52C-3-308. Representation of obligee.

It shall be the duty of the district attorney to represent the obligee in proceedings authorized by this Chapter unless alternative arrangements are made by the obligee. An obligee may employ private counsel to represent the obligee in proceedings authorized by this Chapter.

Notes

The first sentence of this section is not included in the model Uniform Interstate Family Support Act (UIFSA) statute adopted by the National Conference of Commissioners on Uniform State Laws (which federal law required North Carolina and other states to adopt verbatim as a condition of receiving federal funding under Titles IV-A and IV-D of the Social Security Act). It is based on provisions of North Carolina's former Uniform Reciprocal Enforcement of Support Act (URESA) statute (G.S. 52A-10.1 and G.S. 52A-10.3) which required the district attorney to represent obligees in interstate support proceedings. The responsibility of district attorneys to represent obligees under this section does not apply when the obligee has made "alternative arrangements" regarding legal representation. A district attorney therefore is not required to represent an obligee in a UIFSA proceeding if the obligee retains private counsel or if the obligee

is receiving legal services from a state or local child support enforcement (IV-D) agency under G.S. 52C-3-307 or Article 9 of G.S. Chapter 110. North Carolina's UIFSA statute omits section 308 of UIFSA (which gives the attorney general, or another agency designated by state law, oversight responsibility for the diligent provision of child support enforcement services by the support enforcement agency and the power to seek compliance with UIFSA).

G.S. 52C-3-309. Duties of State information agency.

(a) The Department of Health and Human Services, Division of Social Services, is designated as the State information agency under this Chapter.

(b) The State information agency shall:

(1) Compile and maintain a current list, including addresses, of the tribunals in this State which have jurisdiction under this Chapter and any support enforcement agencies in this State and transmit a copy to the state information agency of every other state;

(2) Maintain a register of tribunals and support enforcement agencies received from other states;

(3) Forward to the appropriate tribunal in the place in this State in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this Chapter received from an initiating tribunal or the state information agency of the initiating state; and

(4) Obtain information concerning the location of the obligor and the obligor's property within this State not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, drivers licenses, and social security.

Notes

See also G.S. 110-139 (location of absent parents).

G.S. 52C-3-310. Pleadings and accompanying documents.

(a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this Chapter must verify the petition. Unless otherwise ordered under G.S. 52C-3-311, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

Notes

Copies of federally approved Uniform Interstate Family Support Act (UIFSA) petitions, affidavits, and pleadings are available through North Carolina's Administrative Office of the Courts.

G.S. 52C-3-311. Nondisclosure of information in exceptional circumstances.

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this Chapter.

G.S. 52C-3-312. Costs and fees.

(a) The petitioner shall not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorneys' fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorneys' fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorneys' fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 of this Chapter, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

Notes

The waiver of filing fees in the Uniform Interstate Family Support Act (UIFSA) applies to all UIFSA proceedings regardless of whether the proceeding is filed by the obligor or obligee, regardless of whether the petitioner is indigent, regardless of whether a child support enforcement (IV-D) agency or the district attorney's office is involved, and regardless of whether the petitioner is represented by private counsel.

G.S. 52C-3-313. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this State to participate in a proceeding under this Chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this Chapter committed by a party while present in this State to participate in the proceeding.

G.S. 52C-3-314. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this Chapter.

Notes

See Reid v. Dixon, 136 N.C. App. 438, 524 S.E.2d 576 (2000) (defendant could not plead nonparentage as a defense against enforcement in North Carolina of a registered Alaska child support order when paternity had previously been adjudicated by the Alaska order).

G.S. 52C-3-315. Special rules of evidence and procedure.

(a) The physical presence of the petitioner in a responding tribunal of this State is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another state to a tribunal of this State by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this Chapter, a tribunal of this State may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this State shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communication between spouses does not apply in a proceeding under this Chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this Chapter.

G.S. 52C-3-316. Communications between tribunals.

A tribunal of this State may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this State may furnish similar information by similar means to a tribunal of another state.

G.S. 52C-3-317. Assistance with discovery.

A tribunal of this State may request a tribunal of another state to assist in obtaining discovery, and upon request, may compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

G.S. 52C-3-318. Receipt and disbursement of payments.

A support enforcement agency or tribunal of this State shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

Notes

See also G.S. 52C-5-501 (direct income withholding under out-of-state order) and G.S. 110-139(f) (centralized State Child Support Collection and Disbursement Unit).

Article 4
Establishment of Support Order

G.S. 52C-4-401. Petition to establish support order.

(a) If a support order entitled to recognition under this Chapter has not been issued, a responding tribunal of this State may issue a support order if:

(1) The individual seeking the order resides in another state; or

(2) The support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if:

(1) The respondent has signed a verified statement acknowledging parentage;
(2) The respondent has been determined by or pursuant to law to be the parent; or
(3) There is other clear and convincing evidence that the respondent is the child's parent.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to G.S. 52C-3-305.

Notes

A North Carolina court may not enter an initial child support order under this section if another court or tribunal has already entered a child support order that is the one "controlling" order governing a parent's responsibility to support a particular child or family of children. *See* G.S. 52C-2-207. It may, however, modify a child support order entered by another court or tribunal if it has jurisdiction to do so under G.S. 52C-6-611 or 52C-6-613.

Article 5
Enforcement of Order of Another State Without Registration

G.S. 52C-5-501. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer shall:

(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;
(2) Immediately provide a copy of the order to the obligor; and
(3) Distribute the funds as directed in the withholding order.

Notes

See also G.S. 110-136.3(d) (income-withholding orders in interstate cases), G.S. 110-136.6, G.S. 110-136.7, and G.S. 110-136.8.

Income withholding under this section is referred to as "direct" interstate income withholding because it is accomplished without registering the underlying child support order in the employer's state pursuant to the Uniform Interstate Family Support Act (UIFSA) and without obtaining an order for income withholding from a court or tribunal in the employer's state. Employers in North Carolina are required to implement income withholding under this section regardless of whether they are subject to personal jurisdiction or doing business in the state whose court or tribunal issued the child support or income-withholding order or the state in which the obligee or child resides.

G.S. 52C-5-502. Employer's compliance with income-withholding order of another state.

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State.

(c) Except as otherwise provided in subsection (d) of this section and G.S. 52C-5-503, the employer shall withhold and distribute the funds as directed in the income-withholding order by complying with terms of the order which specify:

(1) The duration and amount of periodic payments of current child support, stated as a sum certain;

(2) The person or agency designated to receive payments and the address to which the payments are to be forwarded;
(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and
(5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:
(1) The employer's fee for processing an income-withholding order;
(2) The maximum amount permitted to be withheld from the obligor's income; and
(3) The times within which the employer must implement the income-withholding order and forward the child support payment.

Notes

In "direct" income-withholding cases, the employer should forward child support payments to the obligee, agency, or tribunal that is designated in the income-withholding order rather than to North Carolina's centralized State Child Support Collection and Disbursement Unit. When the obligor is employed in North Carolina, the employer must comply with the provisions of G.S. 110-136.6 and G.S. 110-136.8 regarding the employer's processing fee, percentage of disposable income that may be withheld, and time limits for implementing income withholding and forwarding withheld child support payments.

G.S. 52C-5-503. Compliance with multiple income-withholding orders.

If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

Notes

See also G.S. 110-136.7 (multiple income-withholding orders).

G.S. 52C-5-504. Immunity from civil liability.

An employer who complies with an income-withholding order issued in another state in accordance with this Article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

G.S. 52C-5-505. Penalties for noncompliance.

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this State.

Notes

See also G.S. 110-136.8(e) (employer sanctions related to income withholding).

G.S. 52C-5-506. Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this State in the same manner as if the order had been issued by a tribunal of this State. G.S. 52C-6-604 applies to the contest.

(b) The obligor shall give notice of the contest to:

(1) A support enforcement agency providing services to the obligee;
(2) Each employer that has directly received an income-withholding order; and
(3) The person or agency designated to receive payments in the income-withholding order if no person or agency is designated, to the obligee.

Notes

The procedures and time limits in G.S. 110-136.4(a)(3) may apply when an obligor contests "direct" income withholding under this section.

G.S. 52C-5-507. Administrative enforcement of orders.

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter.

Article 6
Enforcement and Modification of Support Order After Registration

Part 1
Registration and Enforcement of Support Order

G.S. 52C-6-601. Registration of order for enforcement.

A support order or an income-withholding order issued by a tribunal of another state may be registered in this State for enforcement.

Notes

Technically speaking, a child support order may be registered for enforcement in North Carolina regardless of whether a North Carolina court has personal jurisdiction over the obligor or the obligor's property. A North Carolina court, however, may not *enforce* a registered child support order against an obligor unless the court has jurisdiction over the obligor or the obligor's property. In most cases, the party registering an out-of-state child support order for enforcement in North Carolina will be a nonresident obligee or a child support agency providing services to a nonresident obligee. A court, however, may enforce a registered out-of-state child support order on behalf of an obligee or child who lives in North Carolina if the court has jurisdiction over the obligor or the obligor's property. (Even though the obligor and obligee both live in North Carolina, the proceeding is an interstate child support proceeding because it involves North Carolina's enforcement of an out-of-state child support order.)

If a registered out-of-state child support order is the one "controlling" order recognized by the Uniform Interstate Family Support Act (UIFSA) and federal Full Faith and Credit for Child

Support Orders Act (FFCCSOA), a North Carolina court must enforce the order prospectively (for current and future support) and with respect to vested, past-due child support arrearages that have accrued under the order. If a registered out-of-state child support order is not entitled to recognition as the one controlling order under UIFSA and FFCCSOA, it may nonetheless be registered for enforcement in North Carolina under UIFSA but may be enforced, pursuant to the full faith and credit clause of the U.S. Constitution, only with respect to vested, past-due child support arrearages that accrued before the date the order was modified, superseded, or determined not to be the one controlling child support order. If a child support order is registered for enforcement in North Carolina under this section and there has been no determination as to whether it is the one controlling order entitled to recognition under UIFSA and FFCCSOA, the court should determine as part of the process of registration for enforcement whether it is the one controlling order entitled to recognition under UIFSA and FFCCSOA. *See* G.S. 52C-2-207.

See also G.S. 52C-2-206(b) (UIFSA proceeding by nonresident obligee, child support enforcement (IV-D) agency, or initiating court or tribunal of another state requesting North Carolina court to enforce North Carolina child support order against obligor or obligor's property in North Carolina).

G.S. 52C-6-602. Procedure to register order for enforcement.

(a) A support order or income-withholding order of another state may be registered in this State by sending the following documents and information to the tribunal for the county in which the obligor resides in this State:

(1) A letter of transmittal to the tribunal requesting registration and enforcement;
(2) Two copies, including one certified copy, of all orders to be registered, including any modification of an order;
(3) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
(4) The name of the obligor and, if known:
    a. The obligor's address and social security number;
    b. The name and address of the obligor's employer and another other source of income of the obligor; and
    c. A description and the location of property of the obligor in this State not exempt from execution; and
(5) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign order, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this State may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

Notes

A petitioner who registers an out-of-state child support order in North Carolina must "substantially" comply with the requirements of this section. *See* Silvering v. Vito, 107 N.C. App. 270, 419 S.E.2d 360 (1992); Twaddell v. Anderson, 136 N.C. App. 56, 523 S.E.2d 710 (1999).

Registration for enforcement is a "two-step" process: (1) registration and confirmation of the out-of-state child support order; (2) enforcement of the registered order. Motions or pleadings seeking enforcement of a registered child support order may be filed at the time the order is registered or any time thereafter.

G.S. 52C-6-603. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this State.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this State.

(c) Except as otherwise provided in this Article, a tribunal of this State shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

Notes

Technically, a registered child support order may be enforced *before* it is confirmed. But if the obligor files a timely contest to registration, the registering court may stay enforcement of the registered order, in whole or in part, pending a decision regarding confirmation of registration.

North Carolina law generally governs the remedies available to enforce a registered out-of-state child support order. *See also* G.S.52C-6-604(b) (statute of limitations for enforcing arrearages).

Although a registered child support order may be enforced in the same manner as a child support order issued by a North Carolina court, registration of an out-of-state support order for enforcement in North Carolina does not make the out-of-state order a North Carolina child support order. Instead, the order remains an order of the issuing tribunal and may be modified only to the extent allowed under the Uniform Interstate Family Support Act (UIFSA) and federal Full Faith and Credit for Child Support Orders Act (FFCCSOA).

See New Hanover County *ex rel*. Mannthey v. Kilbourne, ___ N.C. App. ___, 578 S.E.2d 610 (2003) (trial court is not required to determine whether a valid, unmodified order that has been registered for enforcement is the "controlling" order when the only issue before the court is enforcement of vested, past-due child support arrearages under the order rather than enforcement of current and future child support).

Registration of an out-of-state support order for enforcement in North Carolina does not necessarily give a North Carolina court jurisdiction to modify the registered support order. *See* G.S. 52C-6-611 and G.S. 52C-6-613; Hinton v. Hinton, 128 N.C. App. 637, 496 S.E.2d 409 (1998).

G.S. 52C-6-604. Choice of law.

(a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrears under the order.

(b) In a proceeding for arrears, the statute of limitations under the laws of this State or of the issuing state, whichever is longer, applies.

Notes

See also G.S. 1-47 (ten-year statute of limitations for enforcement of child support arrearages).

When an out-of-state child support order is registered for enforcement in North Carolina, the law of the issuing state and the terms of the registered order—not North Carolina law—govern the amount, scope, and duration of the obligor's duty of support. *See* Welsher v. Rager, 127 N.C. App. 521, 491 S.E.2d 661 (1997); State *ex rel*. Harnes v. Lawrence, 140 N.C. App. 707, 538 S.E.2d 223 (2000).

See also State *ex rel*. George v. Bray, 130 N.C. App. 552, 503 S.E.2d 686 (1998) (choice of law regarding statute of limitations).

Part 2
Contest of Validity or Enforcement

G.S. 52C-6-605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrears and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) Of the amount of any alleged arrears.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable.

Notes

The Uniform Interstate Family Support Act (UIFSA) no longer specifies the manner in which notice must be given (formerly, it allowed notice of registration to be served on the registering party by first class mail). Absent clarification through legislation or case law, the most prudent course may be to serve notice of registration through personal service or certified mail pursuant to G.S. 1A-1, Rule 4.

G.S. 52C-6-606. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within 20 days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrears pursuant to G.S. 52C-6-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

Notes

When a party fails to contest registration within twenty days after notice of registration, the registering tribunal may, upon motion and a showing of excusable neglect on the part of the contesting party, set aside confirmation of the registered child support order and allow the party to contest registration pursuant to G.S. 52C-6-607. *See* Tepper v. Hoch, 140 N.C. App. 354, 536 S.E.2d 654 (2000).

G.S. 52C-6-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) The issuing tribunal lacked personal jurisdiction over the contesting party;

(2) The order was obtained by fraud;
(3) The order has been vacated, suspended, or modified by a later order;
(4) The issuing tribunal has stayed the order pending appeal;
(5) There is a defense under the law of this State to the remedy sought;
(6) Full or partial payment has been made; or
(7) The statute of limitations under G.S. 52C-6-604 precludes enforcement of some or all of the arrears.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this State.

(c) If the contesting party does not establish a defense under subsection (a) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

Notes

A North Carolina court must enforce a registered out-of-state support order unless the obligor establishes one of the defenses to registration or enforcement under G.S. 52C-6-607. *See* Welsher v. Rager, 127 N.C. App. 521, 491 S.E.2d 661 (1997).

A North Carolina court may not refuse to register or confirm an out-of-state child support order simply because there is a dispute regarding the amount of arrearages owed under the order. *See* Martin County *ex rel*. Hampton v. Dallas, 140 N.C. App. 267, 535 S.E.2d 903 (2000). If a court or tribunal of another state has entered a valid order determining the amount of child support arrearages owed under the order, the obligor is bound by that order and the registering court must recognize the other court's decision with respect to the amount of arrearages owed. If a court or tribunal of another state has not entered a binding order adjudicating the amount of arrearages owed under the registered order, the obligor may contest registration and enforcement by contesting the amount of arrearages claimed, and the registering court must make a determination with respect to the amount of child support arrearages owed.

See also State *ex rel*. George v. Bray, 130 N.C. App. 552, 503 S.E.2d 686 (1998); Tepper v. Hoch, 140 N.C. App. 354, 536 S.E.2d 654 (2000).

G.S. 52C-6-608. Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Notes

When a party fails to contest registration within twenty days after notice of registration, the registering tribunal may, upon motion and a showing of excusable neglect on the part of the contesting party, set aside confirmation of the registered child support order and allow the party to contest registration pursuant to G.S. 52C-6-607. *See* Tepper v. Hoch, 140 N.C. App. 354, 536 S.E.2d 654 (2000).

Part 3
Registration and Modification of Child Support Order

G.S. 52C-6-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this State in the same manner provided in Part 1 of this Article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

Notes

The procedure for registering a child support order for modification is the same as that for registering a child support order for registration. *See* G.S. 52C-6-602; G.S. 52C-6-605 through G.S. 52C-6-608. Under the Uniform Interstate Family Support Act (UIFSA), an out-of-state child support order may be registered in North Carolina for enforcement, for modification, or for enforcement and modification. The registration of an out-of-state child support order in North Carolina does not necessarily give the registering court jurisdiction to modify the registered order. *See* G.S. 52C-6-611 and G.S. 52C-6-613.

See also G.S.52C-2-206(b) (UIFSA proceeding by nonresident obligee, child support enforcement (IV-D) agency, or initiating court or tribunal of another state requesting North Carolina court to modify North Carolina child support order).

G.S. 52C-6-610. Effect of registration for modification.

A tribunal of this State may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this State, but the registered order may be modified only if the requirements of G.S. 52C-6-611 have been met.

G.S. 52C-6-611. Modification of child support order of another state.

(a) After a child support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only if G.S. 52C-6-613 does not apply and after notice and hearing it finds that:

(1) The following requirements are met:
   a. The child, the individual obligee, and the obligor do not reside in the issuing state;
   b. A petitioner who is a nonresident of this State seeks modification; and
   c. The respondent is subject to the personal jurisdiction of the tribunal of this State; or

(2) The child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this State and all of the parties who are individuals have filed a written consent in the issuing tribunal for a tribunal of this State to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this act, the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State, and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support

orders for the same obligor and child, the order that controls and must be so recognized under G.S. 52C-2-207 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

Notes

See also G.S. 52C-6-613; G.S. 50-13.7 and G.S. 50-13.10.

Absent written consent of the parties under G.S. 52C-6-611(a)(2), a North Carolina court may not modify a registered out-of-state child support order if the registered support order is entitled to recognition under G.S. 52C-2-207 and the issuing tribunal retains continuing, exclusive jurisdiction under G.S. 52C-2-205. *See* Welsher v. Rager, 127 N.C. App. 521, 491 S.E.2d 661 (1997); Hinton v. Hinton, 128 N.C. App. 637, 496 S.E.2d 409 (1998).

Absent written consent of the parties under G.S. 52C-6-611(a)(2), a North Carolina court may not modify a registered out-of-state child support order unless (1) the party seeking modification is not a resident of North Carolina (this requirement is referred to as UIFSA's "play away" or "no home court advantage" rule); (2) the issuing tribunal has lost its continuing, exclusive jurisdiction because neither of the individual parties nor the child still lives in the issuing state; *and* (3) the North Carolina court has personal jurisdiction over the respondent.

A North Carolina court may modify a registered child support order if the issuing state no longer has continuing, exclusive jurisdiction and the other requirements of the Uniform Interstate Family Support Act (UIFSA) and federal Full Faith and Credit for Child Support Orders Act (FFCCSOA) are met. *See* Kelly v. Otte, 123 N.C. App. 585, 474 S.E.2d 131 (1996).

When a North Carolina court has jurisdiction to modify a registered out-of-state child support order under G.S. 52C-6-611, it may not modify the order unless it finds that there has been a substantial change of circumstances since the date the order was entered. North Carolina law determines whether there has been a substantial change of circumstances. *See* G.S. 50-13.7.

When a North Carolina court has jurisdiction to modify a registered child support order, it may not modify any "nonmodifiable" aspects of the registered order. If, for example, the issuing state's law requires a parent to support his or her child until the child reaches the age of twenty-one or is emancipated and the issuing tribunal would not have the authority to modify that requirement under the issuing state's law, a North Carolina court that exercises its jurisdiction under this section to modify the "controlling" order entered by the issuing tribunal may not modify the provisions of the order that require the obligor to pay support until the child reaches the age of twenty-one or is emancipated, even though North Carolina law would not allow a court to order the obligor to support the child until the child reaches the age of twenty-one or is emancipated. *See* Lombardi v. Lombardi, ___ N.C. App. ___, 579 S.E.2d 419 (2003) (holding that, under New Jersey law, duration of child support was not a "nonmodifiable" aspect of New Jersey child support order that had been registered for modification in North Carolina).

A North Carolina court that exercises its jurisdiction under this section to modify a registered child support order may not retroactively modify vested past-due child support arrearages if the arrearages could not be retroactively modified under G.S. 50-13.10 or by the issuing tribunal under a similar law of the issuing state.

When a North Carolina court exercises its jurisdiction under this section to modify a registered child support order, the registered order as modified becomes prospectively an order of the North Carolina court and ceases to be an order of the issuing tribunal.

This section does not allow the modification of registered spousal support orders. *See* G.S. 52C-2-205(f).

G.S. 52C-6-612. Recognition of order modified in another state.

A tribunal of this State shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to a law substantially similar to this Chapter and, upon request, except as otherwise provided in this Chapter, shall:

(1) Enforce the order that was modified only as to amounts accruing before the modification;
(2) Enforce only nonmodifiable aspects of that order;
(3) Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
(4) Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

G.S. 52C-6-613. Jurisdiction to modify child support order of another state when individual parties reside in this State.

(a) If all of the parties who are individuals reside in this State and the child does not reside in the issuing state, a tribunal of this State has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2 of this Chapter, this Article, and the procedural and substantive law of this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 of this Chapter do not apply.

G.S. 52C-6-614. Notice to issuing tribunal of modification.

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

Article 7
Determination of Parentage

G.S. 52C-7-701. Proceeding to determine parentage.

(a) A tribunal of this State may serve as an initiating or responding tribunal in a proceeding brought under this Chapter or a law substantially similar to this Chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this State shall apply the procedural and substantive law of this State and the rules of this State on choice of law.

Notes

The paternity of a minor child may be determined through a Uniform Interstate Family Support Act (UIFSA) proceeding either independently or in conjunction with a proceeding seeking child support.

See also G.S. 49-14 through G.S. 49-16 (civil actions to establish paternity of illegitimate child); G.S. 52C-3-314 (nonparentage may not be raised as a defense in a UIFSA proceeding if parentage has already been adjudicated).

A party filing a UIFSA proceeding to establish the paternity of a child must attach a certified copy of the child's birth certificate to the UIFSA petition. *See* G.S. 49-14; Reynolds v. Motley, 96 N.C. App. 299, 385 S.E.2d 548 (1989).

Article 8
Interstate Rendition

G.S. 52C-8-801. Grounds for rendition.

(a) For purposes of this Article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this Chapter.

(b) The Governor of this State may:

(1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this State with having failed to provide for the support of an obligee; or

(2) On the demand by the governor of another state, surrender an individual found in this State who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this Chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

G.S. 52C-8-802. Conditions of rendition.

(a) Before making demand that the governor of another state surrender an individual charged criminally in this State with having failed to provide for the support of an obligee, the Governor of this State may require a prosecutor of this State to demonstrate that at least 60 days previously the obligee has initiated proceedings for support pursuant to this Chapter or that the proceeding would be of no avail.

(b) If, under this Chapter or a law substantially similar to this Chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the Governor of this State surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

Article 9
Miscellaneous Provisions

G.S. 52C-9-901. Uniformity of application and construction.

This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it.

Notes

The Uniform Interstate Family Support Act (UIFSA) should be construed *in pari materia* with the federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B. *See* Welsher v. Rager, 127 N.C. App. 521, 491 S.E.2d 661 (1997).

G.S. 52C-9-902. Severability clause.

If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

Chapter 58
Insurance

Article 3
General Regulations for Insurance

G.S. 58-3-185. Lien created for payment of past-due child support obligations.

(a) In the event that the Department of Health and Human Services or any other obligee, as defined in G.S. 110-129, provides written notification to an insurance company authorized to issue policies of insurance pursuant to this Chapter that a claimant or beneficiary under a contract of insurance owes past-due child support and accompanies this information with a certified copy of the court order ordering support together with proof that the claimant or beneficiary is past due in meeting this obligation, there is created a lien upon any insurance proceeds in favor of the Department or obligee. This section shall apply only in those instances in which there is a nonrecurring payment of a lump-sum amount equal to or in excess of three thousand dollars ($3,000) or periodic payments with an aggregate amount that equals or exceeds three thousand dollars ($3,000).

(b) Liens arising under this section shall be subordinate to liens upon insurance proceeds for personal injuries arising under Article 9 of Chapter 44 of the General Statutes and valid health care provider claims covered by health benefit plans as defined in G.S. 58-3-172. As used in this section, the term health benefit plans does not include disability income insurance.

Notes

This section was first enacted in 1995 as G.S. 44-49.1, was recodified in 1996, and became effective July 1, 1996.

See also 1996 N.C. Sess. Laws ch. 674 (repealing 1995 amendments to G.S. 44-50 authorizing child support liens on funds paid in compensation for or settlement of personal injuries in litigation or otherwise).

See Orange County *ex rel*. Byrd v. Byrd, 129 N.C. App. 818, 501 S.E.2d 109 (1998).

Article 51
Nature of Policies

G.S. 58-51-120. Coverage of children.

(a) No health insurer shall deny enrollment of a child under the health benefit plan of the child's parent on any of the following grounds:

(1) The child was born out of wedlock.

(2) The child is not claimed as a dependent on the parent's federal income tax return.
(3) The child does not reside with the parent or in the insurer's service area.

(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through a health insurer, the health insurer:

(1) Must allow the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions.
(2) Must enroll the child under family coverage upon application of the child's other parent or the Department of Health and Human Services in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.
(3) May not disenroll or eliminate coverage of the child unless the health insurer is provided satisfactory written evidence that:
   a. The court or administrative order is no longer in effect; or
   b. The child is or will be enrolled in comparable health benefit plan coverage through another health insurer, which coverage will take effect not later than the effective date of disenrollment.

(c) If a child has health benefit plan coverage through the health insurer of a noncustodial parent, that health insurer shall do all of the following:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage.
(2) Permit the custodial parent (or the health care provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent.
(3) Make payments on claims submitted in accordance with subdivision (2) of this subsection directly to the custodial parent, the provider, or the Department of Health and Human Services.

(d) No health insurer may impose requirements on any State agency that has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

Notes

See also G.S. 50-13.11; G.S. 108A-69; G.S. 110-136.14.

Chapter 93B
Occupational Licensing Boards

G.S. 93B-13. Revocation when licensing privilege forfeited for nonpayment of child support or for failure to comply with subpoena.

(a) Upon receipt of a court order, pursuant to G.S. 50-13.12 and G.S. 110-142.1, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records, report the action within 30 days to the Department of Health and Human Services, and follow the normal postrevocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court or the Department of Health and Human Services in a IV-D case that the licensee is no longer delinquent in child support payments, or, as applicable that the licensee is in compliance with or is no longer subject to the subpoena that was the basis for the revocation.

(b) Upon receipt of notification from the Department of Health and Human Services that a licensee under an occupational licensing board's jurisdiction has forfeited the licensee's occupational license pursuant to G.S. 110-142.1, then the occupational licensing board shall send a notice of intent to revoke or suspend the occupational license of that licensee as provided by G.S. 110-142.1(d). If the license is revoked as provided by the provisions of G.S. 110-142.1, the revocation shall remain in effect until the board receives certification by the designated representative or the child support enforcement agency that the licensee is no longer delinquent in child support payments, or, as applicable that the licensee is in compliance with or is no longer subject to a subpoena that was the basis for the revocation.

(c) If at the time the court revokes a license pursuant to subsection (a) of this section, or if at the time the occupational licensing board revokes a license pursuant to subsection (b) of this section, the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under its jurisdiction, and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 50-13.12 or G.S. 110-142.1 then the revocation period imposed by the occupational licensing board applies.

(d) Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked pursuant to subsection (a) or (b) of this section is no longer delinquent in child support payments, the occupational licensing board shall reinstate the license. Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked because of failure to comply with a subpoena is in compliance with or no longer subject to the subpoena, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee.

Notes

See also G.S. 50-13.12 and G.S. 110-142.1.

G.S. 93B-14. Information on applicants for licensure.

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only as follows:

(1) To the State Child Support Enforcement Program of the Department of Health and Human Services upon its request and for the purpose of enforcing a child support order.

* * *

Notes

G.S. 93B-14 was enacted in 1997 in response to a provision in the 1996 federal welfare reform law requiring applicants for professional or occupational licenses, drivers licenses, and marriage licenses to provide their Social Security numbers and to allow state and local child support enforcement (IV-D agencies) to obtain their names, Social Security numbers, and other information for the purpose of establishing and enforcing child support orders.

Chapter 96
Employment Security

Article 1
Employment Security Commission

G.S. 96-4. Administration.

* * *

(t) Confidentiality of Records, Reports, and Information Obtained from Claimants, Employers, and Units of Government.

(1) Confidentiality of Information Contained in Records and Reports.

* * *

(v) The Commission shall release the payment and the amount of unemployment compensation benefits upon receipt of a subpoena in a proceeding involving child support.

* * *

Article 2
Unemployment Insurance Division

G.S. 96-17. Protection of rights and benefits; attorney representation; prohibited fees; deductions for child support obligations.

* * *

(d) (1) Definitions. For the purpose of this subsection and when used herein:

* * *

b. "Child support obligation" includes only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

c. "State or local child support enforcement agency" means any agency of this State or a political subdivision thereof operating pursuant to a plan described in subparagraph b. above.

(2) a. An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether the individual owes child support obligations, as defined under subparagraph (1)b. of this subsection. If any such individual discloses that he or she owes child support obligations and is determined by the Commission to be eligible for payment of unemployment compensation, the Commission shall notify the State or local child support enforcement agency enforcing such obligation that such individual has been determined to be eligible for payment of unemployment compensation.

b. Upon payment by the State or local child support enforcement agency of the processing fee provided for in paragraph (4) of this subsection and beginning with any payment of unemployment compensation that, except for the provisions of this subsection, would be made to the individual during the then current benefit year and more than five working days after the receipt of the processing fee by the Commission, the Commission shall deduct and withhold from any unemployment compensation otherwise payable to an individual who owes child support obligations:

1. The amount specified by the individual to the Commission to be deducted and withheld under this paragraph if neither subparagraph 2. nor subparagraph 3. of this paragraph is applicable; or
2. The amount, if any, determined pursuant to an agreement submitted to the Commission under section 454(20)(B)(i) of the Social Security Act by the State or local child support enforcement agency, unless subparagraph 3. of this paragraph is applicable; or
3. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to properly served legal process, as that term is defined in section 462(e) of the Social Security Act.

c. Any amount deducted and withheld under paragraph b. of this subdivision shall be paid by the Employment Security Commission to the appropriate State or local child support enforcement agency.

d. The Department of Health and Human Services and the Commission are hereby authorized to enter into one or more agreements which may provide for the payment to the Commission of the processing fees referred to in subparagraph b. and the payment to the Department of Health and Human Services of unemployment compensation benefits withheld, referred to in subparagraph c., on an open account basis. Where such an agreement has been entered into, the processing fee shall be deemed to have been made and received (for the purposes of fixing the date on which the Commission will begin withholding unemployment compensation benefits) on the date a written authorization from the Department of Health and Human Services to charge its account is received by the Commission. Such an authorization shall apply to all processing fees then or thereafter (within the then current benefit year) chargeable with respect to any individual name in the authorization. Any agreement shall provide for the reimbursement to the Commission of any start-up costs and the cost of providing notice to the Department of Health and Human Services of any disclosure required by subparagraph a. Such an agreement may dispense with the notice requirements of subparagraph a. by providing for a suitable substitute procedure, reasonably calculated to discover those persons owing child support obligations who are eligible for unemployment compensation payments.

(3) Any amount deducted and withheld under paragraph (2) of this subdivision shall, for all purposes, be treated as if it were paid to the individual as unemployment compensation and then paid by such individual to the State or local child support enforcement agency in satisfaction of the individual's child support obligations.

(4) a. On or before April 1 of 1983 and each calendar year thereafter, the Commission shall set and forward to the Secretary of Health and Human Services for use in the next fiscal year, a schedule of processing fees for the withholding and payment of unemployment compensation as provided for in this subsection, which fees shall reflect its best estimate of the administrative cost to the Commission generated thereby.

b. At least 20 days prior to September 25, 1982, the Commission shall set and forward to the Secretary of Health and Human Services an interim schedule of fees which will be in effect until July 1, 1983.

c. The provisions of this subsection apply only if arrangements are made for reimbursement by the State or local child support agency for all administrative costs incurred by the Commission under this subsection attributable to child support obligations enforced by the agency.

Notes

See also G.S. 110-129 and G.S. 110-136.4.

Chapter 105A
Setoff Debt Collection Act

G.S. 105A-2. Definitions.

The following definitions apply in this Chapter:

(1) Claimant agency. — Either of the following:
  a. A State agency.

* * *

(2) Debt. — Any of the following:
  a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.
  b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.

* * *

(3) Debtor. — An individual who owes a debt.

(4) Department. — The Department of Revenue.

* * *

(8) Refund. — An individual's North Carolina income tax refund.

(9) State agency. — Any of the following:
  a. A unit of the executive, legislative, or judicial branch of State government.
  b. A county, to the extent it administers a program supervised by the Department of Health and Human Services or it operates a Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act.

Notes

Setoff of an obligor's state income tax refund to recover past-due child support arrearages is an available remedy only in child support cases handled by state or local child support enforcement (IV-D) agencies. County-administered child support enforcement (IV-D) programs are considered "state agencies" under this chapter.

G.S. 105A-3. Remedy additional; mandatory State usage; optional local usage; obtaining identifying information; registration.

(a) Remedy Additional. — The collection remedy under this Chapter is in addition to and not in substitution for any other remedy available by law.

(b) Mandatory State Usage. — A State agency must submit a debt owed to it for collection under this Chapter unless the State Controller has waived this requirement or the State agency has determined that the validity of the debt is legitimately in dispute, an alternative means of collection is pending and believed to be adequate, or such a collection attempt would result in a loss of federal funds. The State Controller may waive the requirement for a State agency, other than the Department of Health and Human Services or a county acting on behalf of that Department, to submit a debt owed to it for collection under this Chapter if the State Controller finds that collection by this means would not be practical or cost effective. A waiver may apply to all debts owed a State agency or a type of debt owed a State agency.

* * *

(c) Identifying Information. — All claimant agencies shall whenever possible obtain the full name, social security number, address, and any other identifying information required by the Department from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under this Chapter.

(d) Registration and Reports. — A State agency must register with the Department and with the State Controller. Every State agency must report annually to the State Controller the amount of debts owed to the agency for which the agency did not submit a claim for setoff and the reason for not submitting the claim.

* * *

G.S. 105A-4. Minimum debt and refund.

This Chapter applies only to a debt that is at least fifty dollars ($50.00) and to a refund that is at least this same amount.

Notes

See Davis v. Department of Human Resources, 126 N.C. App. 383, 485 S.E.2d 342 (1997), *aff'd in part and rev'd in part* 349 N.C. 208, 505 S.E.2d 77 (1998).

G.S. 105A-6. Procedure Department to follow in making setoff.

(a) Notice to Department. — A claimant agency seeking to attempt collection of a debt through setoff must notify the Department in writing and supply information necessary to identify the debtor whose refund is sought to be set off. The claimant agency may include with the notification the date, if any, that the debt is expected to expire. The agency must notify the Department in writing when a debt has been paid or is no longer owed the agency.

(b) Setoff by Department. — The Department, upon receipt of notification, must determine each year whether the debtor to the claimant agency is entitled to a refund of at least fifty dollars ($50.00) from the Department. Upon determination by the Department that a debtor specified by a claimant agency qualifies for such a refund, the Department must set off the debt against the refund to which the debtor would otherwise be entitled and must refund any remaining balance to the debtor. The Department must mail the debtor written notice that the setoff has occurred and must credit the net proceeds collected to the claimant agency. If the claimant agency is a State agency, that agency must credit the amount received to a nonreverting trust account and must follow the procedure set in G.S. 105A-8.

G.S. 105A-8. State agency notice, hearing, decision, and refund of setoff.

(a) Notice. — Within 10 days after a State agency receives a refund of a debtor, the agency must send the debtor written notice that the agency has received the debtor's refund. The notice must explain the debt that is the basis for the agency's claim to the debtor's refund and that the agency intends to apply the refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt. A State agency that does not send a debtor a notice within the time required by this subsection must refund the amount set off plus the collection assistance fee, in accordance with subsection (e) of this section.

(b) Hearing. — A hearing on a contested claim of a State agency . . . must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes . . . A request for a hearing on a contested claim of any State agency must be filed within 30 days after the State agency mails the debtor notice of the proposed setoff. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(c) Decision. — A decision made after a hearing under this section must determine whether a debt is owed to the State agency and the amount of the debt.

(d) Return of Amount Set Off. — If a State agency fails to send the notice required by subsection (a) of this section within the required time or a decision finds that a State agency is not entitled to any part of an amount set off, the agency must send the taxpayer the entire amount set

off plus the collection assistance fee retained by the Department. That portion of the amount returned that reflects the collection assistance fee must be paid from the State agency's funds.

If a debtor owes a debt to a State agency and the net proceeds credited to the State agency for the debt exceed the amount of the debt, the State agency must send the balance to the debtor. No part of the collection assistance fee retained by the Department may be returned when a debt is owed but it is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-266. A State agency that returns a refund to a taxpayer under this subsection must pay from the State agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer.

G.S. 105A-9. Appeals from hearings.

Appeals from hearings allowed under this Chapter . . . shall be in accordance with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of initial judicial review shall be the superior court for the county in which the debtor resides. . . .

G.S. 105A-12. Priorities in claims to setoff.

The Department has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund. State agencies have priority over local agencies for collection by setoff. When there are multiple claims by State agencies other than the Department, the claims have priority based on the date each agency registered with the Department under G.S. 105A-3. When there are multiple claims by two or more organizations submitting debts on behalf of local agencies, the claims have priority based on the date each organization registered with the Department under G.S. 105A-3. . . .

G.S. 105A-13. Collection assistance fees.

(a) State Setoff. — To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of no more than fifteen dollars ($15.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year. The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

* * *

G.S. 105A-14. Accounting to the claimant agency; credit to debtor's obligation.

(a) Simultaneously with the transmittal of the net proceeds collected to a claimant agency, the Department must provide the agency with an accounting of the setoffs for which payment is being made. The accounting must whenever possible, include the full names of the debtors, the debtors' social security numbers, the gross proceeds collected per setoff, the net proceeds collected per setoff, and the collection assistance fee added to the debt and collected per setoff.

(b) Upon receipt by a claimant agency of net proceeds collected on the claimant agency's behalf by the Department, a final determination of the claim if it is a State agency claim, and an accounting of the proceeds as specified under this section, the claimant agency must credit the debtor's obligation with the net proceeds collected.

G.S. 105A-15. Confidentiality exemption; nondisclosure.

(a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting disclosure by the Department of the contents of taxpayer records or information and notwithstanding any

confidentiality statute of any claimant agency, the exchange of any information among the Department, the claimant agency, the organization submitting debts on behalf of a local agency, and the debtor necessary to implement this Chapter is lawful.

(b) The information a claimant agency or an organization submitting debts on behalf of a local agency obtains from the Department in accordance with the exemption allowed by subsection (a) may be used by the agency or organization only in the pursuit of its debt collection duties and practices and may not be disclosed except as provided in G.S. 105-259, 153A-148.1, or 160A-208.1.

G.S. 105A-16. Rules.

The Secretary of Revenue may adopt rules to implement this Chapter. The State Controller may adopt rules to implement this Chapter.

Chapter 108A
Social Services

Article 1
County Administration

Part 3
Special County Attorneys for Social Services Matters

G.S. 108A-18. Duties and responsibilities.

(a) The special county attorney shall have the following duties and responsibilities:

* * *

(2) To represent the county, the plaintiff, or the obligee in all proceedings brought under Chapter 52A, the Uniform Reciprocal Enforcement of Support Act and to exercise continuous supervision of compliance with any order entered in any proceeding under that act;

* * *

(4) To assist the district attorney with the preparation and prosecution of criminal cases under Article 40 of Chapter 14, entitled "Protection of the Family";

(5) To assist the district attorney with the preparation and prosecution of proceedings authorized by Chapter 49, entitled "Bastardy";

* * *

Notes

See also G.S. 14-322 and G.S. 14-322-1; G.S. 49-2; G.S. 52C-3-307.

In some, but not all, North Carolina counties, the county department of social services is the "designated representative" responsible for administering the child support enforcement (IV-D) program. *See* G.S. 110-129(5) and G.S. 110-141. Attorneys employed or retained to represent a county department of social services are not necessarily "special" county attorneys for social services matters. *See* G.S. 108A-16.

Article 2
Programs of Public Assistance

Part 2
Work First Program

G.S. 108A-27.2. General duties of the Department.

The Department [of Health and Human Services] shall have the following general duties with respect to the Work First Program:

* * *

(3) Define requirements for assignment of child support income and compliance with child support activities.

* * *

Notes

See also G.S. 110-137 (assignment of child support rights on behalf of dependent children receiving public assistance).

G.S. 108A-27.9. State Plan.

* * *

(c) The State Plan shall include the following generally applicable provisions:

* * *

(5) Requirements for assignment of child support income and compliance with child support activities;

* * *

Notes

See also G.S. 110-137 (assignment of child support rights on behalf of dependent children receiving public assistance).

Part 6
Medical Assistance Program

G.S. 108A-69. Employer obligations.

(a) As used in this section and in G.S. 108A-70:

(1) "Health benefit plan" means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes; or a plan provided by another benefit arrangement. "Health benefit plan" does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).

(2) "Health insurer" means any health insurance company subject to Articles 1 through 63 of Chapter 58 of the General Statutes, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of Chapter 58 of the General Statutes; a group health plan, as defined in Section 607(1) of the Employee Retirement Income Security Act of 1974; and the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes.

(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through an employer, the employer:

(1) Must allow the parent to enroll, under family coverage, the child if the child would be otherwise eligible for coverage without regard to any enrollment season restrictions.
(2) Must enroll the child under family coverage upon application of the child's other parent or upon receipt of notice from the Department of Health and Human Services in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.
(3) May not disenroll or eliminate coverage of the child unless:
   a. The employer is provided satisfactory written evidence that:
      1. The court or administrative order is no longer in effect; or
      2. The child is or will be enrolled in comparable health benefit plan coverage that will take effect not later than the effective date of disenrollment; or
   b. The employer has eliminated family health benefit plan coverage for all of its employees.
(4) Must withhold from the employee's compensation the employee's share, if any, of premiums for health benefit plan coverage, not to exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, as amended; and must pay this amount to the health insurer; subject to regulations, if any, adopted by the Secretary of the U.S. Department of Health and Human Services.

Notes

See also G.S. 50-13.11; G.S. 58-51-120; G.S. 110-136.13.

Under this section and the federal Consumer Credit Protection Act, 15 U.S.C. §§ 1672 and 1673, the amount an employer withholds from an employee's compensation for health insurance premiums generally may not exceed 25 percent of the employee's disposable earnings.

G.S. 108A-70. Recoupment of amounts spent on medical care.

(a) The Department may garnish the wages, salary, or other employment income of, and the Secretary of Revenue shall withhold amounts from State tax refunds to, any person who:

(1) Is required by court or administrative order to provide health benefit plan coverage for the cost of health care services to a child eligible for medical assistance under Medicaid; and
(2) Has received payment from a third party for the costs of such services; but
(3) Has not used such payments to reimburse, as appropriate, either the other parent or guardian of the child or the provider of the services;

to the extent necessary to reimburse the Department for expenditures for such costs under this Part; provided, however, claims for current and past due child support shall take priority over any such claims for the costs of such services.

(b) To the extent that payment for covered services has been made under G.S. 108A-55 for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the Department of Health and Human Services is considered to have acquired the rights of the individual to payment by any other party for those health care items or services.

Notes

This section does not clearly specify what procedure should be followed in garnishing earnings under this section. *See also* 15 U.S.C. § 1673 (limiting the percentage of an employee's

disposable earnings that may be garnished under state law). *See also* G.S. 110-136.3 through G.S. 110-136.10 (income withholding for child support).

Part 8
Health Insurance Program for Children

G.S. 108A-70.21. Program eligibility; benefits; enrollment fee and other cost-sharing; coverage from private plans; purchase of extended coverage.

(a) Eligibility. — The Department [of Health and Human Services] may enroll eligible children based on availability of funds. Following are eligibility and other requirements for participation in the Program:

* * *

(3) If a responsible parent is under a court order to provide or maintain health insurance for a child and has failed to comply with the court order, then the child is deemed uninsured for purposes of determining eligibility for Program benefits if at the time of application the custodial parent shows proof of agreement to notify and cooperate with the child support enforcement agency in enforcing the order.

If health insurance other than under the Program is provided to the child after enrollment and prior to the expiration of the eligibility period for which the child is enrolled in the Program, then the child is deemed to be insured and ineligible for continued coverage under the Program. The custodial parent has a duty to notify the Department within 10 days of receipt of the other health insurance, and the Department, upon receipt of notice, shall disenroll the child from the Program. As used in this paragraph, the term "responsible parent" means a person who is under a court order to pay child support.

* * *

Notes

See also G.S. 50-13.11; G.S. 58-51-120; G.S. 110-136.14.

Article 3
Social Services Programs

G.S. 108A-73. Services appeals and confidentiality of records.

The provisions of Article 4 on public assistance and social services appeals and confidentiality of records shall be applicable to social services programs authorized under this Article.

Notes

See also G.S. 108A-79 and G.S. 108A-80 (appeals by social services clients and confidentiality of records concerning social services clients). The provisions of G.S. 108A-79 may apply to clients who receive child support enforcement services from county social services departments that administer county child support (IV-D) programs pursuant to G.S. Chapter 110, Article 9. Administrative appeals by clients of state child support (IV-D) offices may be governed by the state's Administrative Procedure Act, G.S. Chapter 150B. The provisions of G.S. 108A-80 may apply to the records of persons who receive child support enforcement (IV-D) services from the state Department of Health and Human Services or county social services departments.

Article 4
Public Assistance and Social Services Appeals and Access to Records

G.S. 108A-79. Appeals.

(a) A public assistance applicant or recipient shall have a right to appeal the decision of the county board of social services, county department of social services, or the board of county commissioners granting, denying, terminating, or modifying assistance, or the failure of the county board of social services or county department of social services to act within a reasonable time under the rules and regulations of the Social Services Commission or the Department [of Health and Human Services]. Each applicant or recipient shall be notified in writing of his right to appeal upon denial of his application for assistance and at the time of any subsequent action on his case.

* * *

(k) Any applicant or recipient who is dissatisfied with the final decision of the Department may file, within 30 days of the receipt of notice of such decision, a petition for judicial review in superior court of the county from which the case arose. Failure to file a petition within the time stated shall operate as a waiver of the right of such party to review, except that, for good cause shown, a judge of the superior court resident in the district or holding court in the county from which the case arose may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver. The hearing shall be conducted according to the provisions of Article 4, Chapter 150B, of the North Carolina General Statutes.

* * *

(l) In the event of conflict between federal law or regulations and State law or regulations, the federal law or regulations shall control.

Notes

See also G.S. 108A-71. The provisions of G.S. 108A-79 may apply to clients who receive child support enforcement services from county social services departments that administer the county's child support (IV-D) program pursuant to G.S. Chapter 110, Article 9. Administrative appeals by clients of state child support (IV-D) offices may be governed by the state's Administrative Procedure Act, G.S. Chapter 150B.

G.S. 108A-80. Confidentiality of records.

(a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county departments of social services or acquired in the course of performing official duties except for the purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal law, rules and regulations, and the rules of the Social Services Commission or the Department.

* * *

(c) Any listing of recipients of benefits under any public assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed public assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a Class 1 misdemeanor.

(d) The Social Services Commission may adopt rules governing access to case files for social services and public assistance programs, except the Medical Assistance Program. . . .

Notes

See also G.S. 108A-71; G.S. 110-139(b) (confidentiality of child support enforcement agency records). The provisions of G.S. 108A-80 may apply to the records of persons who receive child support enforcement (IV-D) services from the state Department of Health and Human Services or county social services departments. State rules regarding the confidentiality of records regarding social services clients are codified in 10A N.C. Administrative Code 69.0101 through 69.0605.

G.S. Chapters 110 through 153A

Chapter 110
Child Welfare

Article 9
Child Support

G.S. 110-128. Purposes.

The purposes of this Article are to provide for the financial support of dependent children; to enforce spousal support when a child support order is being enforced; to provide that public assistance paid to dependent children is a supplement to the support required to be provided by the responsible parent; to provide that the payment of public assistance creates a debt to the State; to provide that the acceptance of public assistance operates as an assignment of the right to child support; to provide for the location of absent parents; to provide for a determination that a responsible parent is able to support his children; and to provide for enforcement of the responsible parent's obligation to furnish support and to provide for the establishment and administration of a program of child support enforcement in North Carolina.

Notes

This article was first enacted in 1975 to comply with the federal child support enforcement requirements in Title IV-D of the Social Security Act, 42 U.S.C. §§ 651 through 669B.

The provisions of this article should be read *in pari materia* with the federal child support enforcement requirements contained in Title IV-D of the Social Security Act (42 U.S.C. §§ 651 through 669B.) and federal regulations (45 C.F.R. Parts 301 through 310), and with the general state laws governing paternity and child support.

The text of the federal child support enforcement law (Title IV-D) is available on-line at: http://www.ssa.gov/OP_Home/ssact/title04/0400.htm. The text of the federal child support enforcement regulations is available on-line at: http://www.acf.dhhs.gov/programs/cse/pol/cfr/2000/index.html. Other federal child support policies and information are available on-line at http://www.acf.dhhs.gov/programs/cse.

G.S. 110-129. Definitions.

As used in this Article:

(1) "Court order" means any judgment or order of the courts of this State or of another state.

(2) "Dependent child" means any person under the age of 18 who is not otherwise emancipated, married or a member of the armed forces of the United States, or any person over the age of 18 for whom a court orders that support payments continue as provided in G.S. 50-13.4(c).

(3) "Responsible parent" means the natural or adoptive parent of a dependent child who has the legal duty to support said child and includes the father of a child born out-of-wedlock and the parents of a dependent child who is the custodial or noncustodial parent of the dependent child requiring support. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in

child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated.

(4) "Program" means the Child Support Enforcement Program established and administered pursuant to the provisions of this Article and Title IV-D of the Social Security Act.

(5) "Designated representative" means any person or agency designated by a board of county commissioners or the Department of Health and Human Services to administer a program of child support enforcement for a county or region of the State.

(6) "Disposable income" means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, unemployment compensation benefits, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Work First Family Assistance, and other public assistance payments shall be excluded from disposable income. For employers, disposable income means "wage" as it is defined by G.S. 95-25.2(16). Unemployment compensation benefits shall be treated as disposable income only for the purposes of income withholding under the provisions of G.S. 110-136.4, and the amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits.

(7) "IV-D case" means a case in which services have been applied for or are being provided by a child support enforcement agency established pursuant to Title IV-D of the Social Security Act as amended and this Article.

(8) "Non-IV-D case" means any case, other than a IV-D case, in which child support is legally obligated to be paid.

(9) "Initiating party" means the party, the attorney for a party, a child support enforcement agency, or the clerk of superior court who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.

(10) "Mistake of fact" means that the obligor:

a. Is not in arrears in an amount equal to the support payable for one month; or
b. Did not request that withholding begin, if withholding is pursuant to a purported request by the obligor for withholding; or
c. Is not the person subject to the court order of support for the child named in the advance notice of withholding; or
d. Does not owe the amount of current support or arrearages specified in the advance notice or motion of withholding; or
e. Has a rate of withholding which exceeds the amount of support specified in the court order.

(11) "Obligee", in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of support, whether child support, alimony, or postseparation support, is owed or the individual's legal representative.

(12) "Obligor" means the individual who owes a duty to make child support payments or payments of alimony or postseparation support under a court order.

(13) "Payor" means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as is defined at 29 USC § 203(d) in the Fair Labor Standards Act.

Notes

See also G.S. 110-136.3 through G.S. 110-136.10 (income withholding); G.S. 110-141 (state and county child support enforcement (IV-D) agencies).

See also the federal Consumer Credit Protection Act, 15 U.S.C. §§ 1672 and 1673 (defining disposable earnings and establishing limits on the percentage of an employee's disposable earnings that may be withheld for family support).

See also the federal Employment Retirement Income Security Act of 1984 (ERISA). ERISA generally prohibits the attachment or assignment of pension benefits payable under covered pension plans. ERISA, however, allows the attachment or assignment of pension benefits for the payment of child support pursuant to a qualified domestic relations order (QDRO). Requirements for QDROs are set forth in 29 U.S.C. § 1056(d)(3).

References to spousal support (alimony and postseparation support) were added in 1998 and apply to actions pending on or after January 1, 1999. *See* S.L. 1998-176, sec. 9 and 10.

The provisions regarding a grandparent's responsibility for supporting his or her grandchild were added in 1995 and apply to child support owed for children born on or after October 1, 1995. *See* 1995 N.C. Sess. Laws ch. 518; G.S. 50-13.4.

G.S. 110-129.1. Additional powers and duties of the Department.

(a) In addition to other powers and duties conferred upon the Department of Health and Human Services, Child Support Enforcement Program, by this Chapter or other State law, the Department shall have the following powers and duties:

(1) Upon authorization of the Secretary, to issue a subpoena for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to a child support establishment or enforcement proceeding or paternity establishment proceeding. The subpoena shall be signed by the Secretary and shall state the name of the person or entity required to produce the information authorized under this section, and a description of the information compelled to be produced. The subpoena may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure. The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina. Return of the subpoena shall be to the person who issued the subpoena. Upon the refusal of any person to comply with the subpoena, it shall be the duty of any judge of the district court, upon application by the person who issued the subpoena, to order the person subpoenaed to show cause why he should not comply with the requirements, if in the discretion of the judge the requirements are reasonable and proper. Refusal to comply with the subpoena or with the order shall be dealt with as for contempt of court and as otherwise provided by law. Information obtained as a result of a subpoena issued pursuant to this subdivision is confidential and may be used only by the Child Support Enforcement Program in conjunction with a child support establishment or enforcement proceeding or paternity establishment proceeding.

(2) For the purposes of locating persons, establishing paternity, or enforcing child support orders, the Program shall have access to any information or data storage and retrieval system maintained and used by the Department of Transportation for drivers license issuance or motor vehicle registration, or by a law enforcement agency in this State for law enforcement purposes, as permitted pursuant to G.S. 132-1.4, except that the Program shall have access to information available to the law enforcement agency pertaining to drivers licenses and motor vehicle registrations issued in other states.

(3) Establish and implement procedures under which in IV-D cases either parent or, in the case of an assignment of support, the State may request that a child support order enforced under this Chapter be reviewed and, if appropriate, adjusted in accordance with the most recently adopted uniform statewide child support guidelines prescribed by the Conference of Chief District Court Judges.
(4) Develop procedures for entering into agreements with financial institutions to develop and operate a data match system as provided under G.S. 110-139.2.
(5) Develop procedures for ensuring that when a noncustodial parent providing health care coverage pursuant to a court order changes employers and is eligible for health care coverage from the new employer, the new employer, upon receipt of notice of the order from the Department, enrolls the child in the employer's health care plan.
(6) Develop and implement an administrative process for paternity establishment in accordance with G.S. 110-132.2.
(7) Establish and implement administrative procedures to change the child support payee to ensure that child support payments are made to the appropriate caretaker when custody of the child has changed, in accordance with G.S. 50-13.4(d).
(8) Establish and implement expedited procedures to take the following actions relating to the establishment of paternity or to establishment of support orders, without obtaining an order from a judicial tribunal:
   a. Subpoena the parties to undergo genetic testing as provided under G.S. 110-132.2;
   b. Implement income withholding in accordance with this Chapter;
   c. For the purpose of securing overdue support, increase the amount of monthly support payments by implementation of income withholding procedures established under G.S. 110-136.4, or by notice and opportunity to contest to an obligor who is not subject to income withholding. Increases under this subdivision are subject to the limitations of G.S. 110-136.6;
   d. For purposes of exerting and retaining jurisdiction in IV-D cases, transfer cases between jurisdictions in this State without the necessity for additional filing by the petitioner or service of process upon the respondent.

(b) As used in this section, the term "Secretary" means the Secretary of Health and Human Services, the Secretary's designee, or a designated representative as defined under G.S. 110-129(5).

Notes

See also G.S. 50-13.12 and G.S. 110-142.1 (revocation of license for failure to comply with subpoenas in child support proceedings); G.S. 110-132.2; G.S. 110-139.2.

This section was enacted in 1997 and applies to actions pending on or after October 1, 1997. *See* S.L. 1997-443.

The decision in Sampson County *ex rel*. Bolton v. Bolton, 93 N.C. App. 134, 377 S.E.2d 88 (1989) probably has been abrogated by the enactment of G.S. 110.129.1(a)(8)c.

G.S. 110-129.2. State Directory of New Hires established; employers required to report; civil penalties for noncompliance; definitions.

(a) Directory Established. — There is established the State Directory of New Hires. The Directory shall be developed and maintained by the Department. The Directory shall be a central repository for employment information to assist in the location of persons owing child support, and in the establishment and enforcement of child support orders.

(b) Employer Reporting. — Every employer in this State shall report to the Directory the hiring of every employee for whom a federal W-4 form is required to be completed by the employee at the time of hiring. The employer shall report the information required under this

section not later than 20 days from the date of hire, or, in the case of an employer who transmits new hire reports magnetically or electronically by two monthly transmissions, not less than 12 nor more than 16 days apart. The Department shall notify employers of the information they must report under this section and of the penalties for not reporting the required information. The required forms must be provided by the Department to employers.

(c) Report Contents. — Each report required by this section shall contain the name, address, and social security number of the employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail.

(d) Penalties for Failure to Report. — Upon a finding that an employer has failed to comply with the reporting requirements of this section, the district court shall impose a civil penalty in an amount not to exceed twenty-five dollars ($25.00). If the court finds that an employer's failure to comply with the reporting requirements is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, then the court shall impose upon the employer a civil penalty in an amount not to exceed five hundred dollars ($500.00). Penalties collected under this subsection shall be deposited to the General Fund.

(e) Entry of Report Data Into Directory. — Within five business days of receipt of the report from the employer, the Department shall enter the information from the report into the Directory.

(f) Notice to Employer to Withhold. — Within two business days of the date the information was entered into the Directory, the Department or its designated representative as defined under G.S. 110-129(5) shall transmit notice to the employer of the newly hired employee directing the employer to withhold from the income of the employee an amount equal to the monthly or other periodic child support obligation, including any past-due support obligation of the employee and subject to the limitations of G.S. 110-136.6, unless the employee's income is not subject to withholding.

(g) Other Uses of Directory Information. — The following agencies may access information entered into the Directory from employer reports for the purposes stated:

(1) The Employment Security Commission for the purpose of administering employment security programs.
(2) The North Carolina Industrial Commission for the purpose of administering workers' compensation programs.
(3) The Department of Revenue for the purpose of administering the taxes it has a duty to collect under Chapter 105 of the General Statutes.

(h) Department May Contract for Services. — The Department may contract with other State or private entities to perform the services necessary to implement this section.

(i) Information Confidential. — Except as otherwise provided in this section, information contained in the Directory is confidential and may be used only by the State Child Support Enforcement Program.

(j) Definitions. — As used in this section, unless the context clearly requires otherwise, the term:

(1) "Business day" means a day on which State offices are open for business.
(2) "Department" means the Department of Health and Human Services.
(3) "Employee" means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986. The term "employee" does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting information as required under this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(4) "Employer" has the meaning given the term in section 3401(d) of the Internal Revenue Code of 1986 and includes persons who are governmental entities and labor organizations. The term "labor organization" shall have the meaning given that term in section 2(5) of the National Labor Relations Act, and includes any entity which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of the National Labor Relations Act of an agreement between the organization and the employer.

Notes

This section was enacted in 1997 (effective October 1, 1997) in response to a federal child support enforcement requirement imposed by the 1996 federal welfare reform law. *See* S.L. 1997-443.

G.S. 110-130. Action by the designated representatives of the county commissioners.

Any county interested in the paternity and/or support of a dependent child may institute civil or criminal proceedings against the responsible parent of the child, or may take up and pursue any paternity and/or support action commenced by the mother, custodian or guardian of the child. Such action shall be undertaken by the designated representative in the county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found. Any legal proceeding instituted under this section may be based upon information or belief. The parent of the child may be subpoenaed for testimony at the trial of the action to establish the paternity of and/or to obtain support for the child either instituted or taken up by the designated representative of the county commissioners. The husband-wife privilege shall not be grounds for excusing the mother or father from testifying at the trial nor shall said privilege be grounds for the exclusion of confidential communications between husband and wife. If a parent called for examination declines to answer upon the grounds that his testimony may tend to incriminate him, the court may require him to answer in which event he shall not thereafter be prosecuted for any criminal act involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in this testimony.

Notes

See also G.S. 8-56 (testimony by spouses in civil proceedings).

A state or county child support enforcement (IV-D) agency has the authority to commence or intervene in a paternity or child support proceeding on behalf of a dependent child or the child's custodian. These paternity and child support proceedings are referred to as IV-D cases. *See* G.S. 110-129(7). They should be brought in the name of the state or county on behalf of, or on the relation of, the dependent child or the child's custodian who receives services from the child support enforcement (IV-D) agency. *See* G.S. 110-130.1(c). In IV-D cases, the state or county is a real party in interest at least to the extent that the child's right to support has been assigned to the state or county pursuant to G.S. 110-137 or by contract, but the state or county is not necessarily the *only* real party in interest in a IV-D case. *See* State *ex rel.* Crews v. Parker, 319 N.C. 354, 354 S.E.2d 501 (1987); *cf.* Settle *ex rel.* Sullivan v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983).

G.S. 110-130.1. Non-Work First services.

(a) All child support collection and paternity determination services provided under this Article to recipients of public assistance shall be made available to any individual not receiving public assistance in accordance with federal law and as contractually authorized by the nonrecipient, upon proper application and payment of a nonrefundable application fee of twenty-five dollars ($25.00). The fee shall be reduced to ten dollars ($10.00) if the individual applying

for services is indigent. An indigent individual is an individual whose gross income does not exceed one hundred percent (100%) of the federal poverty guidelines issued each year in the Federal Register by the U.S. Department of Health and Human Services. For the purposes of this subsection, the term "gross income" has the same meaning as defined in G.S. 105-134.1.

(b) [Repealed.]

(b1) In cases in which a public assistance debt which accrued pursuant to G.S. 110-135 remains unrecovered, support payments shall be transmitted to the Department of Health and Human Services for appropriate distribution. When services are terminated and all costs and any public assistance debts have been satisfied, the support payment shall be redirected to the client.

(c) Actions or proceedings to establish, enforce, or modify a duty of support or establish paternity as initiated under this Article shall be brought in the name of the county or State agency on behalf of the public assistance recipient or nonrecipient client. Collateral disputes between a custodial parent and noncustodial parent, involving visitation, custody and similar issues, shall be considered only in separate proceedings from actions initiated under this Article. The attorney representing the designated representative of programs under Title IV-D of the Social Security Act shall be deemed attorney of record only for proceedings under this Article, and not for the separate proceedings. No attorney/client relationship shall be considered to have been created between the attorney who represents the child support enforcement agency and any person by virtue of the action of the attorney in providing the services required.

(c1) The Department is hereby authorized to use the electronic and print media in attempting to locate absent and deserting parents. Due diligence must be taken to ensure that the information used is accurate or has been verified. Print media shall be under no obligation or duty, except that of good faith, to anyone to verify the correctness of any information furnished to it by the Department or county departments of social services.

(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for non-Work First arrearages certified for the collection of past due support from State or federal income tax refunds shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client.

Notes

See also G.S. Ch. 105A (setoff of state income tax refunds to collect child support arrearages); G.S. 110-139(f) (centralized State Child Support Collection and Disbursement Unit).

G.S. 110-130.2. Collection of spousal support.

Spousal support shall be collected for a spouse or former spouse with whom the absent parent's child is living when a child support order is being enforced under this Article. However, the spousal support shall be collected: (i) only if there is an order establishing the support obligation with respect to such spouse; and (ii) only if an order establishing the support obligation with respect to the child is being enforced under this Article. The Child Support Enforcement Program is not authorized to assist in the establishment of a spousal support obligation.

G.S. 110-131. Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance.

(a) If a parent of any dependent child receiving public assistance fails or refuses to cooperate with the county in locating and securing support from a nonsupporting responsible parent, this parent may be cited to appear before any judge of the district court and compelled to disclose such information under oath and/or may be declared ineligible for public assistance by the county department of social services for as long as he fails to cooperate.

(b) Any parent who, having been cited to appear before a judge of the district court pursuant to subsection (a), fails or refuses to appear or fails or refuses to provide the information requested may be found to be in contempt of said court and may be fined not more than one hundred dollars ($100.00) or imprisoned not more than six months or both.

(c) Any parent who is declared ineligible for public assistance by the county department of social services shall have his needs excluded from consideration in determining the amount of the grant, and the needs of the remaining family members shall be met in the form of a protective payment in accordance with G.S. 108-50.

G.S. 110-131.1. Notice; due process requirements met.

In any child support enforcement proceeding the trial court may deem State due process requirements for notice and service of process to be met with respect to the nonmoving party, upon delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure with respect to all pleadings subsequent to the original complaint.

Notes

See also G.S. 1A-1, Rule 5. This section was enacted in 1997 (effective October 1, 1997). *See* S.L. 1997-443.

G.S. 110-132. Affidavit of parentage and agreement to support.

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written affidavits of parentage executed by the putative father and the mother of the dependent child shall constitute an admission of paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or
(2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the rescission and to include in the order specific findings of fact that the request for rescission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders rescission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of rescission to the State Registrar of Vital Statistics. Upon receipt of an order of rescission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in

such cases. The written affidavit shall contain the social security number of the person executing the affidavit. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affidavits and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an affidavit of parentage, and of any alternatives to the execution of an affidavit of parentage. The mother shall not be excused from making the affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she attests.

(b) At any time after the filing with the district court of an affidavit of parentage, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the affidavit of parentage previously filed with said court. The court may order the responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to participate in the work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate. The amount of child support payments so ordered shall be determined as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court.

Notes

See also G.S. 110-133 and G.S. 110-134; G.S. 130A-101(f) (affidavit of parentage and issuance of birth certificate for illegitimate child); G.S. 130A-118 (amendment of birth certificate based on adjudication regarding paternity); 42 U.S.C. 666(a)(5)(C) (federal requirements regarding voluntary paternity acknowledgment process).

Before 1997, G.S. 110-132 provided that a voluntary affidavit of parentage executed by the parents of an illegitimate child had the same force and effect as a judgment regarding paternity *when the affidavit was approved and signed by a district court judge*. In response to the enactment of new federal requirements regarding expedited procedures for voluntary acknowledgment of paternity, G.S. 110-132 was amended in 1997 and 1999 to repeal the provisions requiring or allowing these affidavits of parentage to be approved or signed by a district court judge and to provide that the affidavits, when executed by the parents of an illegitimate child, have the same legal effect, for purposes of establishing a child support order, as a judgment establishing paternity.

Two cases (Chambers v. Chambers, 43 N.C. App. 361, 258 S.E.2d 822 (1979) and Myers v. Myers, 39 N.C. App. 201, 249 S.E.2d 853 (1978)) have held (in the context of the legitimation or attempted legitimation of an illegitimate child by marriage of the child's mother and reputed father pursuant to G.S. 49-12) that the putative father of an illegitimate child is estopped from denying his paternity of that child if he has previously executed a sworn statement acknowledging his paternity of the child. Despite the holdings in these two cases, however, it is clear that the facts in *Chambers* and *Myers* did not satisfy the elements of equitable estoppel required by North Carolina law. *See* Keech v. Hendricks, 141 N.C. App. 649, 540 S.E.2d 71 (2000) (a claim or

defense based on equitable estoppel generally requires (a) a false statement by the person against whom estoppel is asserted, (b) actual or constructive knowledge by that person of the real facts, (c) an intent by that person that the false statement be relied upon, (d) lack of knowledge with respect to the real facts on the part of the person who is asserting estoppel, (e) reliance by the person on the false statement, and (f) a detrimental change in position by that person based on the false statement). Similarly, the sworn statement of a putative father acknowledging paternity of an illegitimate child under G.S. 110-1332 or G.S. 130A-101(f), in and of itself, will rarely satisfy the requirements for equitable estoppel on the issue of paternity. It is therefore not at all clear that North Carolina recognizes claims of "paternity by estoppel" based on the words or deeds of a putative father who is not a child's biological or adoptive parent (as opposed to the establishment of paternity via a final judgment that has previously determined that a putative father is a child's biological father and precludes the putative father from denying paternity in a subsequent legal proceeding through the doctrines of res judicata or collateral estoppel).

A voluntary acknowledgment of paternity pursuant to this section is res judicata with respect to the issue of paternity and may not be relitigated or collaterally attacked in a subsequent child support proceeding based on the obligor's acknowledgment of paternity. *See* Person County *ex rel*. Lester v. Holloway, 74 N.C. App. 734, 329 S.E.2d 713 (1985); Sampson County *ex rel*. McNeil v. Stevens, 101 N.C. App. 719, 400 S.E.2d 776 (1991). A voluntary acknowledgment of paternity under this section or a voluntary support agreement or child support order based on a voluntary acknowledgment of paternity under this section, however, may be set aside pursuant to G.S. 1A-1, Rule 60, if the voluntary acknowledgment of paternity was the result of fraud, duress, neglect, or mistake and relief from the paternity determination is warranted under Rule 60 or other applicable law. *See* Leach v. Alford, 63 N.C. App. 118, 304 S.E.2d 265 (1983). *Cf*. Beaufort County *ex rel*. King v. Hopkins, 62 N.C. App. 321, 302 S.E.2d 662 (1983). *See also* State *ex rel*. Davis v. Adams, 153 N.C. App. 512, 571 S.E.2d 238 (2002) (holding that an unrescinded voluntary paternity acknowledgment executed under this section may be set aside only pursuant to Rule 60 or an independent action alleging extrinsic fraud on the court).

Work activities under 42 U.S.C. § 607(d) include: unsubsidized employment; subsidized public or private sector employment; community service programs; a work experience program (if sufficient private sector employment is unavailable); on-the-job training; job readiness activities; job search activities; vocational education or job skills training; providing child care to persons engaged in community service programs; or specified educational activities or programs (if the obligor has not received a high school diploma or GED).

G.S. 110-132.1. Paternity determination by another state entitled to full faith and credit.

A paternity determination made by another state:

(1) In accordance with the laws of that state, and

(2) By any means that is recognized in that state as establishing paternity shall be entitled to full faith and credit in this State.

Notes

This section applies to paternity determinations made pursuant to the *laws* of another state as well as to those made by the judgments of the courts or tribunals of another state. *See also* G.S. 52C-3-314; Reid v. Dixon, 136 N.C. App. 438, 524 S.E.2d 576 (2000); New York *ex rel*. Andrews v. Paugh, 135 N.C. App. 434, 521 S.E.2d 475 (1999).

G.S. 110-132.2. Expedited procedures to establish paternity in IV-D cases.

(a) In a IV-D court action, a local child support enforcement office may, without obtaining a court order, subpoena a minor child, the minor child's mother, and the putative father of the minor child (including the mother's husband, if different from the putative father) to appear for

the purpose of undergoing blood or genetic testing to establish paternity. A subpoena issued pursuant to this section must be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to comply with a subpoena may be dealt with as for contempt of court, and as otherwise provided under law. A party may contest the results of the genetic or blood test. If the results are contested, the agency shall, upon request and advance payment by the contestant, obtain additional testing.

(b) A person subpoenaed to submit to testing pursuant to subsection (a) of this section may contest the subpoena. To contest the subpoena, a person must, within 15 days of receipt of the subpoena, request a hearing in the county where the local child support enforcement office that issued the subpoena is located. The hearing shall be before the district court and notice of the hearing must be served by the petitioner on all parties to the proceeding. Service shall be in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The hearing shall be held and a determination made within 30 days of the petitioner's request for hearing as to whether the petitioner must comply with the subpoena to undergo testing. If the trial court determines that the petitioner must comply with the subpoena, the determination shall not prejudice any defenses the petitioner may present at any future paternity litigation.

Notes

This section was enacted in 1997 (effective October 1, 1997). *See* S.L. 1997-443. The provisions of G.S. 8-50.1(b1) regarding admission of the results of genetic paternity tests may not apply to genetic paternity tests conducted pursuant to this section. *See* Catawba County *ex rel.* Kenworthy v. Khatod, 125 N.C. App. 131, 479 S.E.2d 270 (1997).

G.S. 110-133. Agreements of support.

In lieu of or in conclusion of any legal proceeding instituted to obtain support from a responsible parent for a dependent child born of the marriage, a written agreement to support the child by periodic payments executed by the responsible parent when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment is made and filed with and approved by a judge of the district court in the county where the custodial parent of the child resides or is found, or in the county where the noncustodial parent resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. A responsible parent executing a written agreement under this section shall provide on the agreement the responsible parent's social security number.

Notes

The North Carolina Child Support Guidelines apply to child support obligations established by voluntary support agreements under this section.

G.S. 110-134. Filing of affidavits, agreements, and orders; and fees.

All affidavits, agreements, and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133 shall be filed by the clerk of superior court in the county in which they are entered. The filing fee for the institution of an action through the entry of an order under either of these provisions shall be four dollars ($4.00).

G.S. 110-135. Debt to State created.

Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child. Provided, however, that in those cases in which child support was required to be paid

incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such court order. This liability shall attach only to public assistance granted subsequent to June 30, 1975, and only with respect to the period of time during which public assistance is granted, and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney or an attorney retained by the county and/or State shall represent the State in all proceedings brought under this section.

Upon the termination of a child support obligation due to the death of the obligor, the Department shall determine whether the obligor's estate contains sufficient assets to satisfy any child support arrearages. If sufficient assets are available, the Department shall attempt to collect the arrearage.

Notes

This section should be read *in pari materia* with G.S. 110-137. Although the state's claim against a child's parent for reimbursement of public assistance is, in a sense, tied to the child's claim for support (because the parent's failure to support the child required the state to provide public assistance, because the child's right to support is assigned to the state under G.S. 110-137 by virtue of the child's receiving public assistance, and because the amount of the parent's debt for public assistance cannot exceed the amount of child support the parent was ordered to pay during the period the child received public assistance), the state's or county's claim for a public assistance debt under this section is legally distinct from a claim for child support brought by a state or county child support enforcement (IV-D) agency on behalf of the child or the child's custodian. The remedies available to enforce an order for child support may not necessarily be available to enforce or collect a judgment for a public assistance debt under this section.

See State *ex rel.* Terry v. Marrow, 71 N.C. App. 170, 321 S.E.2d 575 (1984) (statute of limitations).

See also Moore County v. Brown, 147 N.C. App. 692, 543 S.E.2d 529 (2001) (county barred by laches, estoppel, or equity from seeking reimbursement of public assistance from child's parent); *cf.* Guilford County *ex rel.* Manning v. Richardson, 150 N.C. App. 14, 562 S.E.2d 593 (2002). *See also* Orange County *ex rel.* Harris v. Keyes, ___ N.C. App. ___, 581 S.E.2d 142 (2003) (trial court lacked authority to retroactively modify judgment for unpaid public assistance).

The last sentence of this section was enacted by S.L. 2003-288. Although this provision was codified as an amendment to G.S. 110-135, it apparently applies to all child support arrearages (rather than judgments for public assistance under G.S. 110-135) owed in cases handled by state or local child support enforcement (IV-D) agencies, including those owed with respect to children who have never received public assistance as well as child support arrearages that have been assigned to the state pursuant to G.S. 110-137 with respect to children who have received public assistance.

G.S. 110-136. Garnishment for enforcement of child-support obligation.

(a) Notwithstanding any other provision of the law, in any case in which a responsible parent is under a court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-

133 to provide child support, a judge of the district court in the county where the mother of the child resides or is found, or in the county where the father resides or is found, or in the county where the child resides or is found may enter an order of garnishment whereby no more than forty percent (40%) of the responsible parent's monthly disposable earnings shall be garnished for the support of his minor child. For purposes of this section, "disposable earnings" is defined as that part of the compensation paid or payable to the responsible parent for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program) which remains after the deduction of any amounts required by law to be withheld. The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed.

(b) The mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may move the court for an order of garnishment. The motion shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the employer of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based upon information and belief), and the amount sought to be garnished, not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. The motion for the wage garnishment order along with a motion to join the alleged employer as a third-party garnishee defendant shall be served on both the responsible parent and the alleged employer in accordance with the provisions of G.S. 1A-1, Rules of Civil Procedure. The time period for answering or otherwise responding to pleadings, motions and other papers issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure, except that the alleged employer third-party garnishee shall have 10 days from the date of service of process to answer both the motion to join him as a defendant garnishee and the motion for the wage garnishment order.

(b1) In addition to the foregoing method for instituting a continuing wage garnishment proceeding for child support through motion, the mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may in an independent proceeding petition the court for an order of continuing wage garnishment. The petition shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the alleged-employer garnishee of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based on information and belief), and the amount sought to be garnished, not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. The petition shall be served on both the responsible parent and his alleged employer in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure.

(c) Following the hearing held pursuant to this section, the court may enter an order of garnishment not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. If an order of garnishment is entered, a copy of same shall be served on the responsible parent and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be garnished for each pay period. The amount garnished shall be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the employer for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(d) Upon receipt of an order of garnishment, the garnishee shall transmit without delay to the State Child Support Collection and Disbursement Unit the amount ordered by the court to be garnished. These funds shall be disbursed to the party designated by the court which in those cases of dependent children receiving public assistance shall be the North Carolina Department of Health and Human Services.

(e) Any garnishee violating the terms of an order of garnishment shall be subject to punishment as for contempt.

Notes

See also G.S. 110-136.3 through G.S. 110-136.10 (income withholding). This section was first enacted in 1975. Although this section was not repealed, the 1986 enactment of G.S. 110-136.3 through G.S. 110-136.10 (income withholding to collect or enforce court-ordered child support) rendered this section practically redundant, unnecessary, and obsolete.

G.S. 110-136.1. Assignment of wages for child support.

Pursuant to G.S. 50-13.4(f)(1), the court may require the responsible parent to execute an assignment of wages, salary, or other income due or to become due whenever his employer's voluntary written acceptance of the wage assignment under G.S. 95-31 is filed with the court. Such acceptance remains effective until the employer files an express written revocation with the court. The amount assigned shall be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the employer for each payment under the order.

Notes

See also G.S. 50-13.4(f)(1); G.S. 95-31 (employer is not required to accept employee's voluntary assignment of wages). This section was first enacted in 1981. It was not repealed when the income-withholding provisions in G.S. 110-136.3 through G.S. 110-136.10 were enacted in 1986.

G.S. 110-136.2. Use of unemployment compensation benefits for child support.

(a) A responsible parent may voluntarily assign unemployment compensation benefits to a child support agency to satisfy a child support obligation or a child support enforcement agency may request a responsible parent to voluntarily assign unemployment benefits to satisfy a child support obligation. An assignment of less than the full amount of the support obligation shall not relieve the responsible parent of liability for the remaining amount.

(b) Upon notification of a voluntary assignment by the Department of Health and Human Services, the Employment Security Commission shall deduct and withhold the amount assigned by the responsible parent as provided in G.S. 96-17.

(c) Any amount deducted and withheld shall be paid by the Employment Security Commission to the Department of Health and Human Services for distribution as required by federal law.

(d) Voluntary assignment of unemployment compensation benefits shall remain effective until the Employment Security Commission receives notification from the Department of Health and Human Services of an express written revocation by the responsible parent.

(e) The Department of Health and Human Services shall ensure that payments received under this section are properly credited against the responsible parent's child support obligation

(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Health and Human Services shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the Employment Security Commission and payment shall be made by the Employment Security Commission directly to the Department of Health and Human Services pursuant to

G.S. 96-17 or to another state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Health and Human Services or to another state under G.S. 52C-5-501, the Employment Security Commission is exempt from the provisions of G.S. 110-136.8.

Notes

See also G.S. 96-17; G.S. 52C-5-501; G.S. 110-129(6); G.S. 110-136.3 through G.S. 110-136.10 (income withholding). Unemployment compensation benefits are not subject to income withholding in non-IV-D child support cases. Unemployment compensation benefits are subject to income withholding in IV-D child support cases only to the extent allowed under this section, G.S. 96-17, G.S. 110-129(6), and G.S. 110-136.4.

G.S. 110-136.3. Income withholding procedures; applicability.

(a) Required Contents of Support Orders. All child support orders, civil or criminal, entered or modified in the State in IV-D cases shall include a provision ordering income withholding to take effect immediately. All child support orders, civil or criminal, initially entered in the State in non-IV-D cases on or after January 1, 1994, shall include a provision ordering income withholding to take effect immediately as provided in G.S. 110-136.5(c1), unless one of the exceptions specified in G.S. 110-136.5(c1) applies. A non-IV-D child support order that contains an income withholding requirement and a IV-D child support order shall:

(1) Require the obligor to keep the clerk of court or IV-D agency informed of the obligor's current residence and mailing address;
(2) [Repealed.]
(2a) [Repealed.]
(3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income;
(4) Require the custodial party to keep the obligor informed of (i) the custodial party's disposable income and the amount and effective date of any substantial change in this disposable income and (ii) the current residence and mailing address of the child, unless the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B of the General Statutes; and
(5) Require the obligor to keep the initiating party informed of the name and address of any payor of the obligor's disposable income and of the amount and effective date of any substantial change in this disposable income.

(a1) Payment Plan/Work Requirement for Past-Due Support. In any IV-D case in which an obligor owes past-due support and income withholding has been ordered but cannot be implemented against the obligor, the court may order the obligor to pay the support in accordance with a payment plan approved by the court and, if the obligor is subject to the payment plan and is not incapacitated, the court may order the obligor to participate in such work activities, as defined under 42 U.S.C. § 607, as the court deems appropriate.

(b) When obligor subject to withholding.

(1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, an obligor shall become subject to income withholding on the date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month, or the date on which the obligor or obligee requests withholding.
(2) In non-IV-D cases in which the child support order was entered prior to January 1, 1994, an obligor shall be subject to income withholding on the earliest of:

a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month;
b. The date on which the obligor requests withholding; or
c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.

(3) In IV-D child support cases in which an order was issued or modified in this State prior to October 1, 1996, and in which the obligor is not otherwise subject to withholding, the obligor shall become subject to withholding if the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month.

(4) In the enforcement of alimony or postseparation support orders pursuant to G.S. 110-130.2, an obligor shall become subject to income withholding on the earlier of:
a. The date on which the obligor fails to make legally obligated alimony or postseparation payments; or
b. The date on which the obligor or obligee requests withholding.

(c) [Repealed.]

(d) Interstate cases. An interstate case is one in which a child support order of one state is to be enforced in another state.

(1) In interstate cases withholding provisions shall apply to a child support order of this or any other state. A petition addressed to this State to enforce a child support order of another state or a petition from an initiating party in this State addressed to another state to enforce a child support order entered in this State shall include:
a. A certified copy of the support order with all modifications, including any income withholding notice or order still in effect;
b. A copy of the income withholding law of the jurisdiction which issued the support order, provided that this jurisdiction has a withholding law;
c. A sworn statement of arrearages;
d. The name, address, and social security number of the obligor, if known;
e. The name and address of the obligor's employer or of any other source of income of the obligor derived in the state in which withholding is sought; and
f. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(2) The law of the state in which the support order was entered shall apply in determining when withholding shall be implemented and interpreting the child support order. The law and procedures of the state where the obligor is employed shall apply in all other respects.

(3) Except as otherwise provided by subdivision (2), income withholding initiated under this subsection is subject to all of the notice, hearing, and other provisions of Chapter 110.

(4) In all interstate cases notices and orders to withhold shall be served upon the payor by a North Carolina agency or judicial officer. In all interstate non-IV-D cases, the advance notice to the obligor shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(5) For purposes of enforcing a petition under this subsection, jurisdiction is limited to the purposes of income withholding and Chapter 52A of the General Statutes shall not apply. Nothing in this subsection precludes any remedy otherwise available in a proceeding under Chapter 52A of the General Statutes.

(e) Procedures and regulations. Procedures, rules, regulations, forms, and instructions necessary to effect the income withholding provisions of this Article shall be established by the

Secretary of the Department of Health and Human Services or the Secretary's designee and the Administrative Office of the Courts. Forms and instructions shall be sent with each order or notice of withholding.

Notes

Federal requirements regarding income withholding in child support cases are codified in 42 U.S.C. § 666(b) and 45 C.F.R. § 303.100. Federal law (42 U.S.C. § 666(b)(7)) requires that income withholding for child support be given priority under state law over any other process, attachment, garnishment, or withholding against the same income.

The income-withholding provisions of G.S. 110-136.3 through G.S. 110-136.10 may be used to collect past-due child support arrearages, current child support, or both current child support and past-due child support arrearages. *See* Griffin v. Griffin, 103 N.C. App. 65, 404 S.E.2d 478 (1991); McGee v. McGee, 118 N.C. App. 19, 453 S.E.2d 531 (1995).

Salaries and wages paid to federal employees, federal military and civil service pensions, federal veterans' benefits, and Social Security benefits payable to an obligor are not exempt from execution, attachment, garnishment or income withholding for child support. *See* 42 U.S.C. § 659; Evans v. Evans, 111 N.C. App. 792, 434 S.E.2d 856 (1993). Federal Supplemental Security Income (SSI) benefits paid to an obligor are exempt from execution, attachment, garnishment, and income withholding for child support.

The interstate income-withholding procedure in G.S. 110-136.3(d) was enacted in 1986. Although this subsection was not repealed, the enactment of the Uniform Interstate Family Support Act rendered this subsection practically redundant, unnecessary, and obsolete. *See also* G.S. 52C-5-501 through G.S. 52C-5-506 and G.S. 52C-6-601 through G.S. 52C-6-608.

G.S. 110-136.3(b)(4) (income withholding to collect or enforce court-ordered spousal support) was enacted in 1998 and applies to cases pending on or after January 1, 1999. S.L. 1998-176, sec. 4.

G.S. 110-136.3(a1) was enacted in 1997. S.L. 1997-433 (effective October 1, 1997). Work activities under 42 U.S.C. § 607(d) include: unsubsidized employment; subsidized public or private sector employment; community service programs; a work experience program (if sufficient private sector employment in unavailable); on-the-job training; job readiness activities; job search activities; vocational education or job skills training; providing child care to persons engaged in community service programs; or specified educational activities or programs (if the obligor has not received a high school diploma or GED).

Former G.S. 110-136.3(d1) (employment verifications) was amended in 2001 and recodified as G.S. 110-139(c1).

G.S. 110-136.4. Implementation of withholding in IV-D cases.

(a) Withholding based on arrearages or obligor's request.

(1) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

a. Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or postseparation support payments on the

obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);

b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;

c. The name of each child or person for whose benefit the child support, alimony or postseparation support payments are due and information sufficient to identify the court order under which the obligor has a duty to support the child, spouse, or former spouse;

d. The amount and sources of disposable income;

e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;

f. An explanation of the obligor's rights and responsibilities pursuant to this section;

g. That withholding will be continued until terminated pursuant to G.S. 110-136.10.

(3) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(4) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(5) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(6) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(b) Immediate income withholding. When a new or modified child support order is entered, the district court judge shall, after hearing evidence regarding the obligor's disposable income, place the obligor under an order for immediate income withholding. The IV-D agency shall serve the payor pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, with a notice of his obligation

to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. If information is unavailable regarding an obligor's disposable income, or the obligor is unemployed, or an agreement is reached between both parties which provides for an alternative arrangement, immediate income withholding shall not apply. The obligor, however, is subject to income withholding pursuant to G.S. 110-136.4(a).

(c) Subsequent payors. If the obligor changes employment or source of disposable income, notice to subsequent payors of their obligation to withhold shall be served as required by G.S. 1A-1, Rule 5, Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(d) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(e) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(f) Applicability of section. The provisions of this section apply to IV-D cases only.

Notes

Effective June 23, 2001, G.S. 110-136.4 was amended to allow IV-D agencies to serve income-withholding notices on payors pursuant to G.S. 1A-1, Rule 5, rather than G.S. 1A-1, Rule 4. S.L. 2001-237. Federal law now requires the use of a standardized, federally approved income-withholding order and notice in all IV-D and non-IV-D child support cases. This form (along with instructions) is available on-line at: http://www.nccourts.org/Forms/Documents/703.pdf and http://www.nccourts.org/Forms/Documents/702.pdf.

G.S. 110-136.5. Implementation of withholding in non-IV-D cases.

(a) Withholding based on delinquent or erratic payments. Notwithstanding any other provision of law, when an obligor is delinquent in making child support payments or has been erratic in making child support payments, the obligee may apply to the court, by motion or in an independent action, for an order for income withholding.

(1) The motion or complaint shall be verified and state, to the extent known:
   a. Whether the obligor is under a court order to provide child support and, if so, information sufficient to identify the order;
   b. Either:
      1. That the obligor is currently delinquent in making child support payments; or
      2. That the obligor has been erratic in making child support payments;
   c. The amount of overdue support and the total amount sought to be withheld;
   d. The name of each child for whose benefit support is payable; and
   e. The name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable income from each payor.

(2) The motion or complaint shall include or be accompanied by a notice to the obligor, stating:
   a. That withholding, if implemented, will apply to the obligor's current payors and all subsequent payors; and
   b. That withholding, if implemented, will be continued until terminated pursuant to G.S. 110-136.10.

At any time the parties may agree to income withholding by consent order.

(b) Withholding Based on Obligor's Request. The obligor may request at any time that income withholding be implemented. The request may be made either verbally in open court or by written request.

(1) A written request for withholding shall state:
   a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;
   b. Whether the obligor is delinquent and the amount of any overdue support;
   c. The name of each child for whose benefit support is payable;
   d. The name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;
   e. That the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10; and
   f. That the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar ($2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income:
      1. Forty percent (40%) if there is only one order for withholding;
      2. Forty-five percent (45%) if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or
      3. Fifty percent (50%) if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.

(2) A written request for withholding shall be filed in the office of the clerk of superior court of the court that entered the order for child support. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee.

(c) Order for withholding. If the district court judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments or that the obligor has been erratic in making child support payments in accordance with G.S. 110-136.5(a), or that the obligor has requested that income withholding begin in accordance with G.S. 110-136.5(b), the court shall enter an order for income withholding, unless:

(1) The obligor proves a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligee's motion or independent action alleging that the obligor is delinquent or has been erratic in making child support payments; or
(2) The court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or
(3) The court finds that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason.

If the obligor fails to respond or appear, the court shall hear evidence and enter an order as provided herein.

(c1) Immediate income withholding. In non-IV-D cases in which a child support order is initially entered on or after January 1, 1994, an obligor is subject to income withholding immediately upon entry of the order, unless either of the following applies:

a. One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding.
b. A written agreement is reached between the parties that provides for an alternative arrangement.

The term "good cause" as used in this subsection includes a reasonable and workable plan for consistent and timely payments by some means other than income withholding. In considering whether a plan is reasonable, the court may consider the obligor's employment history and record of meeting financial obligations in a timely manner.

In entering an order for immediate income withholding under this subsection, the court shall follow the requirements and procedures as specified in other sections of this Article, including amount to be withheld, multiple withholdings, notice to payor, and termination of withholding.

(d) Notice to payor and obligor. If an order for income withholding is entered, a notice of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 5, Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(e) Modification of withholding. When an order for withholding has been entered under this section, any party may file a motion seeking modification of the withholding based on changed circumstances. The clerk or the court on its own motion may initiate a hearing for modification when it appears that modification of the withholding is required or appropriate.

Notes

Federal law now requires the use of a standardized, federally approved income-withholding order and notice in all IV-D and non-IV-D child support cases. *See* note to G.S. 110-136.4.

G.S. 110-136.6. Amount to be withheld.

(a) Computation of amount. When income withholding is implemented pursuant to this Article, the amount to be withheld shall include:

(1) An amount sufficient to pay current child support; and
(2) An additional amount toward liquidation of arrearages; and
(3) A processing fee of two dollars ($2.00) to cover the cost of withholding, to be retained by the payor for each withholding unless waived by the payor.

The amount withheld may also include court costs and attorneys fees as may be awarded by the court in non-IV-D cases and as may be awarded by the court in IV-D cases pursuant to G.S. 110-130.1.

(b) Limits on amount withheld. Withholding for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed forty percent (40%) of the obligor's disposable income for one pay period from the payor when there is one order of withholding. The sum of multiple withholdings, for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed:

(1) Forty-five percent (45%) of disposable income for one pay period from the payor in the case of an obligor who is supporting his spouse or other dependent children; or
(2) Fifty percent (50%) of disposable income for one pay period from the payor in the case of an obligor who is not supporting a spouse or other dependent children.

(b1) When there is an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments, the total amount withheld under this Article and under G.S. 50-16.7 shall not exceed the amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(b).

(c) Contents of order and notice. An order or advance notice for withholding and any notice to a payor of his obligation to withhold shall state a specific monetary amount to be withheld and the amount of disposable income from the applicable payor on which the amount to be withheld was determined. The notice shall clearly indicate that in no event shall the amount withheld exceed the appropriate percentage of disposable income paid by a payor as provided in subsection (b).

Notes

See also G.S. 110-129(6) (definition of disposable income) and G.S. 110-129.1(a)(8)c. The income-withholding limits for child support under this section are lower than the maximum allowed under the federal Consumer Credit Protection Act. *See* 15 U.S.C. § 1673. Federal law now requires the use of a standardized, federally approved income-withholding order and notice in all IV-D and non-IV-D child support cases. *See* note to G.S. 110-136.4.

G.S. 110-136.7. Multiple withholding.

When an obligor is subject to more than one withholding for child support, withholding for current child support shall have priority over past-due support. Where two or more orders for current support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced.

Notes

See Guilford County *ex rel*. Gray v. Shepherd, 138 N.C. App. 324, 532 S.E.2d 533 (2000).

Federal regulations (45 C.F.R. § 303.100(a)(5)) require states to allocate child support payments collected via income withholding when more than one income-withholding order is entered against one obligor (for the support of more than one obligee or family). State laws regarding the allocation of child support payments collected via income withholding may not result in one family receiving no support. This federal regulation does not apply to child support payments that are not made via income withholding. Federal law does not specify the manner in which states must allocate child support payments between two or more obligees or families when the obligor's child support payments are not made via income withholding.

G.S. 110-136.8. Notice to payor; payor's responsibilities.

(a) Contents of notice. Notice to a payor of his obligation to withhold shall include information regarding the payor's rights and responsibilities, the amount of disposable income attributable to that payor on which that withholding is based, the penalties under this section, and the maximum percentages of disposable income that may be withheld as provided in G.S. 110-136.6.

(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) Withhold from the obligor's disposable income and, within 7 business days of the date the obligor is paid, send to the State Child Support Collection and Disbursement Unit the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either:
   a. Compute, and send the appropriate amount to the State Child Support Collection and Disbursement Unit, using the percentages as provided in G.S. 110-136.6; or
   b. Request the initiating party to inform the payor of the proper amount to be withheld for that period;
(2) Continue withholding until further notice from the IV-D agency, the clerk of superior court, or the State Child Support Collection and Disbursement Unit;
(3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;

(4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;
(5) Promptly notify the obligee in a IV-D case, or the clerk of superior court or the State Child Support Collection and Disbursement Unit in a non-IV-D case, in writing:
a. If there are one or more orders of child support withholding for the obligor;
a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;
b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;
c. Of the payor's inability to comply with the withholding for any reason; and
(6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income.

(c) Change in obligor's employment. If the obligor changes employment within the State when withholding is in effect, the requirement for withholding shall continue, and
(1) In a IV-D case, the IV-D obligee shall make any necessary adjustments to the withholding, notify the obligor and his new employer in accordance with this section, and file a copy of the adjusted withholding with the clerk of superior court;
(2) In a non-IV-D case, the clerk shall serve a notice of obligation to withhold according to the terms of the withholding order on the new employer and on the obligor; if the obligor or payor gives notice that an adjustment to the withholding order, other than the change in payor, is needed, the matter shall be scheduled for hearing before a child support hearing officer or district court judge who shall make any necessary adjustments to the withholding.

(d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to the State Child Support Collection and Disbursement Unit if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor and the date that each payment was withheld from the obligor's disposable income.

(e) Prohibited conduct by payor; civil penalty. Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty. For a first offense, the civil penalty shall be one hundred dollars ($100.00). For second and third offenses, the civil penalty shall be five hundred dollars ($500.00) and one thousand dollars ($1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(f) Any payor who withholds the sum provided in any notice or order to the payor shall not be liable for any penalties under this section.

Notes

See also G.S. 110-139(f) (state Child Support Collection and Disbursement Unit). Federal law now requires the use of a standardized, federally approved income-withholding order and notice in all IV-D and non-IV-D child support cases. *See* note to G.S. 110-136.4.

G.S. 110-136.9. Payment of withheld funds.

In all cases, the State Child Support Collection and Disbursement Unit shall distribute payments received from payors to the appropriate recipient.

Notes

Federal regulations (45 C.F.R. § 303.100(a)(5)) require states to allocate child support payments collected via income withholding when more than one income-withholding order is entered against one obligor (for the support of more than one obligee or family). State laws regarding the allocation of child support payments collected via income withholding may not result in one family receiving no support. This federal regulation does not apply to child support payments that are not made via income withholding. Federal law does not specify the manner in which states must allocate child support payments between two or more obligees or families when the obligor's child support payments are not made via income withholding.

G.S. 110-136.10. Termination of withholding.

A requirement that income be withheld for child support shall promptly terminate as to prospective payments when the payor receives notice from the court or IV-D agency that:

(1) The child support order has expired or become invalid; or
(2) The initiating party, the obligor, and the district court judge agree to termination because there is another adequate means to collect child support or arrearages; or
(3) The whereabouts of the child and obligee are unknown, except that withholding shall not be terminated until all valid arrearages to the State are paid in full.

G.S. 110-136.11. National Medical Support Notice required.

(a) Notice Required. — The National Medical Support Notice shall be used to notify employers and health insurers or health care plan administrators of an order entered pursuant to G.S. 50-13.11 for dependent health benefit plan coverage in a IV-D case. For purposes of this section and G.S. 110-136.12 through G.S. 110-136.14, the terms "health benefit plan" and "health insurer" are as defined in G.S. 108A-69(a).

(b) Exception. — The National Medical Support Notice shall not be used in cases where the court has ordered nonemployment-based health benefit plan coverage or where the parties have stipulated to nonemployment-based health benefit plan coverage.

Notes

See also G.S. 50-13.11; G.S. 108A-69(a); G.S. 110-136.12 through G.S. 110-136.14; 45 C.F.R. § 303.32 (federal national medical support notice requirements). G.S. 110-136.11 became effective October 1, 2001. S.L. 2001-237, sec. 8, 12.

G.S. 110-136.12. IV-D agency responsibilities.

(a) Within five business days after the order for dependent health benefit plan coverage has been filed in a IV-D case, the IV-D agency shall serve, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, the National Medical Support Notice on the employer, if known to the agency, of the noncustodial parent.

(b) In cases where the obligor is a newly hired employee, the agency shall serve, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, the National Medical Support Notice, along with the

income withholding notice pursuant to G.S. 110-136.8, on the employer within two business days after the date of entry of an obligor in the State Directory of New Hires.

(c) The IV-D agency shall notify the employer within 10 business days when there is no longer a current order for medical support for which the agency is responsible.

(d) In cases where the health insurer or health care plan administrator reports that there is more than one health care option available under the health benefit plan, the IV-D agency, in consultation with the custodian, may within 20 business days of the date the insurer or administrator informed the agency of the option, select an option and inform the health insurer or health care plan administrator of the option selected.

Notes

See also 45 C.F.R. § 303.32 (federal national medical support notice requirements). G.S. 110-136.12 became effective October 1, 2001. S.L. 2001-237, sec. 9, 12.

G.S. 110-136.13. Employer responsibilities.

(a) For purposes of this section, G.S. 110-136.11, 110-136.12, and 110-14, the term "employer" means employer as is defined at 29 U.S.C. § 203(d) in the Fair Labor Standards Act.

(b) Within 20 business days after the date of the National Medical Support Notice, the employer shall transfer the Notice to the health insurer or health care plan administrator that provides health benefit plan coverage for which the child is eligible unless one of following applies:

(1) The employer does not maintain or contribute to plans providing dependent or family health insurance.
(2) The employee is among a class of employees that are not eligible for family health benefit plan coverage under any group health plan maintained by the employer or to which the employer contributes.
(3) Health benefit plan coverage is not available because the employee is no longer employed by this employer.
(4) State or federal withholding limitations prevent the withholding from the obligor's income of the amount required to obtain insurance under the terms of the plan.

(c) If the employer is not required to transfer the Notice under subsection (b) of this section, then the employer shall, within the 20 business days after the date of the Notice, inform the agency in writing of the reason or reasons the Notice was not transferred.

(d) Upon receipt from the health insurer or health care plan administrator of the cost of dependent coverage, the employer shall withhold this amount from the obligor's wages and transfer this amount directly to the insurer or plan administrator.

(e) In the event the health insurer or health care plan administrator informs the employer that the Notice is not a "qualified medical child support order" (QMCSO), the employer shall notify the agency in writing.

(f) In the event the health insurer or health care plan administrator informs the employer of a waiting period for enrollment, the employer shall inform the insurer or administrator when the employee is eligible to be enrolled in the plan.

(g) An employer obligated to provide health benefit plan coverage pursuant to this section shall inform the IV-D agency upon termination of the noncustodial parent's employment within 10 business days. The notice shall be in writing to the agency and shall include the obligor's last known address and the name and address of the new employer, if known.

(h) In the event the employee contests the withholding order, the employer shall initiate and continue the withholding until the employer receives notice that the contested case is resolved.

(i) An employer shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding.

(j) If a court finds that an employer has failed to comply with this section, the employer is liable as a payor pursuant to G.S. 110-136.8(e). Additionally, an employer who violates this section is liable in a civil action for reasonable damages.

Notes

See also 45 C.F.R. § 303.32 (federal national medical support notice requirements); 29 U.S.C. § 203(d) (definition of employer). The Employee Retirement Income Security Act's (ERISA) provisions regarding qualified medical child support orders (QMCSOs) are codified in 29 U.S.C. 1169. A QMCSO must include the name and last known mailing address of the parent participant and the child recipient; a description of the type of coverage to be provided to the child; the period of time encompassed by the order; and a list of those plans affected by the order. G.S. 110-136.13 became effective October 1, 2001. S.L. 2001-237, sec. 10, 12.

G.S. 110-136.14. Health insurer or health care plan administrator responsibilities.

(a) Upon receipt of the National Medical Support Notice from the employer, and within 40 business days after the date of the Notice, a health care plan administrator shall determine if the Notice is a "qualified medical child support order" (QMCSO), as defined under the Employee Retirement Income Security Act (ERISA) or the Child Support Performance and Incentive Act (CSPIA). If the Notice is not a qualified medical support order, the plan administrator shall inform the employer within the time set forth in this subsection.

(b) Upon receipt of the Notice in a nonqualified ERISA plan, or upon a finding that the Notice constitutes a qualified medical child support order, the health insurer or plan administrator shall enroll the dependent child or children in a health benefit plan, determine the cost of the coverage, and inform the employer of the amount of the employee contribution to be withheld from the obligor's wages, if appropriate. If the child or children are already enrolled in a health benefit plan, the employer shall be so notified. The employer shall also be notified of any applicable enrollment waiting periods.

(c) If there is more than one health benefit plan in which the dependent child or children may be enrolled, the insurer or plan administrator shall so inform the custodian within the time specified in this subsection. If no plan has been selected within 20 days from the date the insurer or administrator informed the agency of the option, the insurer or administrator may enroll the child or children in the insurer's or administrator's default option.

(d) If the obligor is subject to a waiting period for enrollment, the insurer or administrator shall inform the agency, the employer, the obligor, and the custodial parent. Upon the completion of the waiting period, the enrollment shall be instituted.

(e) When a court finds that a health insurer or health care plan administrator has failed to comply with this section, the employer is liable as a payor pursuant to G.S. 110-136.10(e). Additionally, a health insurer or health care plan administrator who violates this section is liable in a civil action for reasonable damages.

Notes

See also 45 C.F.R. § 303.32 (federal national medical support notice requirements). The Employee Retirement Income Security Act's (ERISA) provisions regarding qualified medical child support orders (QMCSOs) are codified in 29 U.S.C. § 1169. A QMCSO must include the name and last known mailing address of the parent participant and the child recipient; a description of the type of coverage to be provided to the child; the period of time encompassed by the order; and a list of those plans affected by the order. G.S. 110-136.13 is effective July 1, 2002. S.L. 2001-237, sec. 11, 12.

G.S. 110-137. Acceptance of public assistance constitutes assignment of support rights to the State or county.

By accepting public assistance for or on behalf of a dependent child or children, the recipient shall be deemed to have made an assignment to the State or to the county from which such assistance was received of the right to any child support owed for the child or children up to the amount of public assistance paid. The State or county shall be subrogated to the right of the child or children or the person having custody to initiate a support action under this Article and to recover any payments ordered by the court of this or any other state.

Notes

See also G.S. 110-135 (responsibility of parent for public assistance paid on behalf of dependent child). Federal law requires the assignment of child support rights on behalf of children who receive federally funded assistance under the former Aid to Families with Dependent Children (AFDC) program and the Temporary Assistance to Needy Families (TANF or Work First) program or the Title IV-E foster care assistance program. *See also* 45 C.F.R. §§ 303.50, 303.51, and 303.52; State *ex rel*. Crews v. Parker, 319 N.C. 334, 354 S.E.2d 501 (1987); Tate v. Tate, 95 N.C. App. 774, 384 S.E.2d 48 (1989) (discussing the nature and extent of assignment of child support rights). The county or state is a real party in interest (but not necessarily the *only* real party in interest) in a child support action brought on behalf of a child who is receiving or has received public assistance to the extent that the child's right to support has been assigned to the state or county pursuant to this section. *See* Settle *ex rel*. Sullivan v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983).

G.S. 110-138. Duty of county to obtain support.

Whenever a county department of social services receives an application for public assistance on behalf of a dependent child, and it shall appear to the satisfaction of the county department that the child has been abandoned by one or both responsible parents, or that the responsible parent(s) has failed to provide support for the child, the county department shall without delay notify the designated representative who shall take appropriate action under this Article to provide that the parent(s) responsible supports the child.

G.S. 110-138.1. Duty of judicial officials to assist in obtaining support.

Any party to whom child support has been ordered to be paid, and who has failed to receive the ordered support payments for two consecutive months, may make application to a magistrate for issuance of criminal process against the responsible parent for violation of G.S. 14-322. If the magistrate determines that the applicant has failed to receive the ordered support for two consecutive months, and that the responsible parent has willfully neglected or refused to make such payments, he shall make a finding of probable cause and issue criminal process for violation of G.S. 14-322. It shall be the duty of the District Attorney to prosecute such charges according to law. It shall be the duty of the Clerk of Superior Court to assist the applicant in making such application to the magistrate for the issuance of criminal process, and to supply such necessary child support records as are in his possession to the magistrate, District Attorney, and the Court.

Notes

See also G.S. 14-322 and G.S. 49-2.

G.S. 110-139. Location of absent parents.

(a) The Department of Health and Human Services shall attempt to locate absent parents for the purpose of establishing paternity of and/or securing support for dependent children. The Department is to serve as a registry for the receipt of information which directly relates to the

identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents, and to develop guidelines for coordinating activities with any governmental department, board, commission, bureau or agency in providing information necessary for the location of absent parents.

(b) In order to carry out the responsibilities imposed under this Article, the Department may request from any governmental department, board, commission, bureau or agency information and assistance. All State, county and city agencies, officers and employees shall cooperate with the Department in the location of parents who have abandoned and deserted children with all pertinent information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential. Except as otherwise stated in this subsection, all nonjudicial records maintained by the Department pertaining to child-support enforcement shall be confidential, and only duly authorized representatives of social service agencies, public officials with child-support enforcement and related duties, and members of legislative committees shall have access to these records. The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee. Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(c) Notwithstanding any other provision of law making such information confidential, an employer doing business in this State or incorporated under the laws of this State shall provide the Department with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to enforce an order for child support: full name, social security account number, date of birth, home address, wages, existing or available medical, hospital, and dental insurance coverage, and number of dependents listed for tax purposes.

(c1) Employment verifications. — For the purpose of establishing, enforcing, or modifying a child support order, the amount of the obligor's gross income may be established by a written statement signed by the obligor's employer or the employer's designee or an Employee Verification form produced by the Automated Collections Tracking System that has been completed and signed by the obligor's employer or the employer's designee. A written statement signed by the employer of the obligor or the employer's designee that sets forth an obligor's gross income, as well as an Employee Verification form signed by the obligor's employer or the employer's designee, shall be admissible evidence in any action establishing, enforcing, or modifying a child support order.

(d) Notwithstanding any other provision of law making this information confidential, including Chapter 53B of the General Statutes, any utility company, cable television company, or financial institution, including federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State shall provide the Department of Health and Human Services with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce an order for child support: full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility company, cable television company, or financial institution. A utility company, cable television company, or financial institution that discloses information pursuant to this subsection in good faith reliance upon certification by the Department is not liable for damages resulting from the disclosure.

(e) Subsection (d) of this section shall not apply to telecommunication utilities or providers of electronic communication service to the general public.

(f) There is established the State Child Support Collection and Disbursement Unit. The duties of the Unit shall be the collection and disbursement of payments under support orders for all

cases. The Department may administer and operate the Unit or may contract with another State or private entity for the administration and operation of the Unit.

Notes

See also G.S. 110-129.1(a)(2) (access by IV-D agencies to DMV and law enforcement records); G.S. 108A-80 (confidentiality of records regarding social services clients); 42 U.S.C. § 454(a)(26) (federal requirements regarding unauthorized use and disclosure of information regarding child support enforcement proceedings).

The 1996 federal welfare reform law required states to establish a statewide, centralized system to collect and disburse child support payments in all IV-D child support cases and in non-IV-D cases in which a child support order was entered on or after January 1, 1994, and payments are made through income withholding. North Carolina's centralized State Child Support Collection and Disbursement Unit was established in 1999. S.L. 1997-433, sec. 8.1. G.S. 110-139(f) was amended in 1999 to require that child support payments in all IV-D cases and all non-IV-D cases (other than those in which the court allows the obligor to make direct payments to the obligee) be made through the centralized State Child Support Collection and Disbursement Unit operated under contract with the state Department of Health and Human Services.

The distribution by the centralized State Child Support Collection and Disbursement Unit of child support payments collected in IV-D cases is governed by federal law and regulations. *See* 42 U.S.C. § 657; 45 C.F.R. § 302.51; U.S. DHHS Office of Child Support Enforcement, Action Transmittal No. 99-01 (http://www.acf.dhhs.gov/programs/cse/pol/at-9901.htm). Federal law and regulations do not govern the distribution of child support payments in non-IV-D cases when these payments are collected through the centralized State Child Support Collection and Disbursement Unit.

Federal regulations (45 C.F.R. § 303.100(a)(5)) require states to allocate child support payments collected via income withholding when more than one income-withholding order is entered against one obligor (for support of more than one obligee or family). *See* G.S. 110-136.7. State laws regarding the allocation of child support payments collected via income withholding may not result in one family receiving no support. This federal regulation does not apply to child support payments that are not made via income withholding. Federal law does not specify the manner in which states must allocate child support payments between two or more obligees or families when the obligor's child support payments are not made via income withholding.

The last two sentences of G.S. 110-139(b) were enacted by S.L. 2003-288.

G.S. 110-139.1. Access to federal parent locator service; parental kidnapping and child custody cases.

(a) Except as otherwise provided in this section, the parent locator service of the Department of Health and Human Services shall transmit, upon payment of the fee prescribed by federal law, requests for information as to the whereabouts of any parent or child to the federal parental locator service when such requests are made by judges, clerks of superior court, district attorneys, or United States attorneys, and when the information is to be used to locate the parent or child for the purpose of enforcing State or federal law with respect to:

(1) The unlawful taking or restraint of a child;
(2) Making or enforcing a child custody determination, including visitation order;
(3) Establishing paternity; or
(4) Establishing, setting, or modifying the amount of, or enforcing child support obligations.

The Department shall not disclose any information from or through the parent locator service if there is reasonable evidence of domestic violence or child abuse and the disclosure of the information could be harmful to the custodial parent and the child of the custodial parent.

(b) For the purpose of this section, custody determination means a judgment, decree, or other order of the court providing for the custody or visitation of a child and includes permanent or temporary orders, and initial orders and modifications.

(c) All nonjudicial records maintained by the Department pertaining to the unlawful taking or restraint of a child or child custody determinations shall be confidential, and only individuals directly connected with the administration of the child support enforcement program and those authorized herein shall have access to these records.

G.S. 110-139.2. Data match system; agreements with financial institutions.

(a) The Department of Health and Human Services and financial institutions doing business in this State shall enter into mutual agreements for the purpose of facilitating the enforcement of child support obligations. The agreements shall provide for the development and operation of a data match system that will enable the financial institutions to provide to the Department on a quarterly basis the information required under G.S. 110-139(d). Financial institutions shall provide the information upon certification by the Department that the person about whom the information is requested is subject to a child support order and the information is necessary to enforce the order. The Department may pay a reasonable fee to the financial institution for conducting the data match required under this section provided that the fee shall not exceed the actual costs incurred by the financial institution to conduct the match.

(b) A financial institution shall not be liable under any State law, including but not limited to Chapter 53B of the General Statutes, for disclosure of information to the State child support agency under this section, and for any other action taken by the financial institution in good faith to comply with this section or with G.S. 110-139.

(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a delinquent child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the delinquency. In order to be able to attach a lien on and levy an obligor's account, the obligor's child support obligation shall be in arrears in an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the arrears amount in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the obligor and the financial institution a notice as provided by this subsection. The notice shall be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure and shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified arrears amount, information for the obligor on how to remove the lien or contest the lien in order to avoid the levy, and a copy of the applicable law, G.S. 110-139.2. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.
(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor to contest the lien, within 10 days after the obligor is served with the notice, the obligor shall send written notice of the basis of the obligor's contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The lien may be contested only on the basis that the arrearage is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), or the obligor is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor

within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the delinquent obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this State.

(c) As used in this subdivision, a financial institution includes federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State.

Notes

See also G.S. 110-139(d). G.S. 110-139.2 was enacted in 1997 in response to a federal child support enforcement requirement included in the 1996 federal welfare reform law. *See* 42 U.S.C. § 666(a)(17).

G.S. 110-139.2(b1), authorizing the imposition of liens on bank accounts to collect child support arrearages, was enacted by S.L. 2003-288 and became effective October 3, 2003.

G.S. 110-139.3. High-volume, automated administrative enforcement in interstate cases (AEI).

Upon request of another state, the Department of Health and Human Services shall use automated data processing to search State databases and determine if information is available regarding a parent who owes a child support obligation and shall seize identified assets using the same techniques as used in intrastate cases. Any request by another state to enforce support orders shall certify the amount of each obligor's debt and that appropriate due process requirements have been met by the requesting state with respect to each obligor. The Department of Health and Human Services shall likewise transmit to other states requests for assistance in enforcing support orders through high-volume, automated administrative enforcement where appropriate.

Notes

See also G.S. 52C-5-507. G.S. 110-139.3 was enacted in 1999 in response to a federal child support enforcement requirement. *See* 42 U.S.C. § 666(a)(14).

G.S. 110-140. Conformity with federal requirements; restriction on options without federal funding.

(a) Nothing in this Article is intended to conflict with any provision of federal law or to result in the loss of federal funds.

(b) Effective July 24, 1997, the Department of Health and Human Services shall not elect any child support distribution option for families receiving cash assistance under the State Plan for the Temporary Assistance for Needy Families (TANF) Block Grant Program for which the federal government does not provide funding to the State to exercise the option.

Notes

This article was first enacted in 1975 to comply with the federal child support enforcement requirements in Title IV-D of the Social Security Act, 42 U.S.C. §§ 651 669B.

The provisions of this article should be read *in pari materia* with the federal child support enforcement requirements contained in Title IV-D of the Social Security Act (42 U.S.C. §§ 651

through 669B.) and federal regulations, 45 C.F.R. Parts 301 through 310, and with the general state laws governing paternity and child support.

The text of the federal child support enforcement law (Title IV-D) is available on-line at: http://www.ssa.gov/OP_Home/ssact/title04/0400.htm. The text of the federal child support enforcement regulations is available on-line at: http://www.acf.dhhs.gov/programs/cse/pol/cfr/2000/index.html. Other federal child support policies and information are available on-line at http://www.acf.dhhs.gov/programs/cse.

G.S. 110-140(b) was enacted in 1997 as part of the state's welfare reform legislation. Its effect is to eliminate the former $50 per month "pass through" of current child support collected for children who receive public assistance and to prohibit the state from distributing child support arrearages to a family when those arrearages have been assigned to the state or county pursuant to G.S. 110-137 and there is an unsatisfied public assistance debt. *See also* 42 U.S.C. § 657; 45 C.F.R. § 302.51 (distribution of child support in IV-D cases).

G.S. 110-141. Effectuation of intent of Article.

The North Carolina Department of Health and Human Services shall supervise the administration of this program in accordance with federal law and shall cause the provisions of this Article to be effectuated and to secure child support from absent, deserting, abandoning and nonsupporting parents.

Effective July 1, 1986, the entity, whether the board of county commissioners or the Department of Health and Human Services, that is administering, or providing for the administration of, this program in each county on June 30, 1986, shall continue to administer, or provide for the administration of, this program in that county, with one exception. If a county program is being administered by the Department of Health and Human Services on June 30, 1986, and if the board of county commissioners of this county desires on or after that date to assume responsibility for the administration of the program, the board of county commissioners shall notify the Department of Health and Human Services between July 1 and September 1 of the current fiscal year. The obligations of the board of county commissioners to assume responsibility for the administration of the program shall not commence prior to July 1 of the subsequent fiscal year. Until that time, it is the responsibility of the Department of Health and Human Services to administer or provide for the administration of the program in the county.

A county may negotiate alternative arrangements to the procedure outlined in G.S. 110-130 for designating a local person or agency to administer the provisions of this Article in that county.

Notes

The child support enforcement (IV-D) program is locally administered by the state Department of Health and Human Services through regional child support enforcement offices in thirty North Carolina counties. In the remaining seventy counties, the IV-D program is locally administered by the county through the county's department of social services, county attorney, county child support office, county tax office, a private contractor, or other arrangements.

G.S. 110-142. Definitions; suspension and revocation of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support, or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.

The definitions in G.S. 110-129 and G.S. 147-54.12 apply to this section and G.S. 110-142.1, and G.S. 110-142.2. In addition, to these sections the following definitions apply:

(1) "Applicant" means any person applying for issuance or renewal of a license.
(2) "Board" means any department, division, agency, officer, board, or other unit of State government that issues licenses.

(3) "Certified list" means a list provided by the designated representative to the Department of Health and Human Services that verifies, under penalty of perjury, that the names contained therein are obligors who have been found to be out of compliance with a judgment or order for support in a IV-D case.
(4) "Compliance with an order for support" means that, as set forth in a judgment or order for child support or family support, the obligor is no more than 90 calendar days in arrears in making payments for current support, in making periodic payments on a support arrearage, or in making periodic payments on a reimbursement for public assistance, has obtained a judicial finding that precludes enforcement of the order, or has entered into a payment schedule, including G.S. 110-142.1(h), for the child support arrearage with the approval of the obligee in a IV-D case.
(5) "License" means (i) for the purposes of G.S. 110- 142.1, a license, certificate, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession or (ii) for the purposes of G.S. 110-142.2, a license to operate a regular or commercial motor vehicle, or to participate in hunting, fishing, or trapping.
(6) "Licensee" means any person holding a license.
(7) "Obligor" means the individual who owes a duty to make child support payments under a court order.

Notes

See also G.S. 110-142.1 and G.S. 110-142.2.

See also G.S. 147-54.12 (defining "occupational license" and "occupational licensing agency").

G.S. 110-142.1. IV-D notified suspension, revocation, and issuance of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.

(a) Effective July 1, 1996, the Department of Health and Human Services may notify any board that a person licensed by that board is not in compliance with an order for child support or has been found by the court not to be in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings.

(b) The designated representative shall submit a certified list with the names, social security numbers, and last known address of individuals who are not in compliance with a child support order or with a subpoena issued pursuant to a child support or paternity establishment proceeding. The designated representative shall verify, under penalty of perjury, that the individuals listed are subject to an order for the payment of support and are not in compliance with the order, or have been found by the court to be not in compliance with a subpoena issued pursuant to a child support or paternity establishment proceeding. The verification shall include the name, address, and telephone number of the designated representative who certified the list. An updated certified list shall be submitted to the Department on a monthly basis.

The Department of Health and Human Services, Division of Social Services, Child Support Enforcement Office, shall consolidate the certified lists received from the designated representatives and, within 30 calendar days of receipt, shall furnish each board with a certified list of the individuals, as specified in this section.

(c) Each board shall coordinate with the Department of Health and Human Services, Division of Social Services, Child Support Enforcement Office, in the development of forms and procedures to implement this section.

(d) Promptly after receiving the certified list of individuals from the Department of Health and Human Services, each board shall determine whether its applicant or licensee is an individual on the list. If the applicant or licensee is on the list, the board shall immediately send notice as specified in this subsection to the applicant or licensee of the board's intent to revoke or suspend the licensee's license in 20 days from the date of the notice, or that the board is withholding issuance or renewal of an applicant's license, until the designated representative certifies that the applicant or licensee is entitled to be licensed or reinstated. The notice shall be made personally or by certified mail to the individual's last known mailing address on file with the board.

(e) Unless notified by the designated representative as provided in subsection (h) of this section, the board shall revoke or suspend the individual's license 20 days from the date of the notice to the individual of the board's intent to revoke or suspend the license. In the event that a license is revoked or application is denied pursuant to this section, the board is not required to refund fees paid by the individual.

(f) Notices shall be developed by each board in accordance with guidelines provided by the Department of Health and Human Services and shall be subject to the approval of the Department of Health and Human Services. The notice shall include the address and telephone number of the designated representative who submitted the name on the certified list, and shall emphasize the necessity of obtaining a certification of compliance from the designated representative or the child support enforcement agency as a condition of issuance, renewal, or reinstatement of the license. The notice shall inform the individual that if a license is revoked or application is denied pursuant to this subsection, the board is not required to refund fees paid by the individual. The Department of Health and Human Services shall also develop a form that the individual shall use to request a review by the designated representative. A copy of this form shall be included with every notice sent pursuant to subsection (d) of this section.

(g) The Department of Health and Human Services shall establish review procedures consistent with this section to allow an individual to have the underlying arrearage and any relevant defenses investigated, to provide an individual information on the process of obtaining a modification of a support order, or, if the circumstances so warrant, to provide an individual assistance in the establishment of a payment schedule on arrears.

(h) If the individual wishes to challenge the submission of the individual's name on the certified list, or if the individual wishes to negotiate a payment schedule, the individual shall within 14 days of the date of notice from the board request a review from the designated representative. The designated representative shall within six days of the date of the request for review notify the appropriate board of the request for review and direct the board to stay any action revoking or suspending the individual's license until further notice from the designated representative. The designated representative shall review the case and inform the individual in writing of the representative's findings and decision upon completion of the review. If the findings so warrant, the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. The agreement shall also provide for the maintenance of current support obligations and shall be incorporated into a consent order to be entered by the court. If the individual fails to meet the conditions of this subsection, the designated representative shall notify the appropriate board to immediately revoke or suspend the individual's license. Upon receipt of notice from the designated representative, the board shall immediately revoke or suspend the individual's license.

(i) The designated representative shall notify the individual in writing that the individual may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.
(2) A judicial determination of compliance.
(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the individual shall file the motion and inform the individual that the individual's name shall remain on the certified

list unless the judicial review results in a finding by the court that the individual is in compliance with this section. The notice shall also inform the individual that the individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10.

(j) The motion for judicial review of the designated representative's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. After service of the request for review, the court shall hold an evidentiary hearing at the next regularly scheduled session for the hearing of child support matters in civil district court. The request for judicial review shall be served by the individual upon the designated representative who submitted the individual's name on the certified list within seven calendar days of the filing of the motion.

(k) If the judicial review results in a finding by the court that the individual is no longer in arrears or that the individual's license should be reinstated to allow the individual an opportunity to comply with a payment schedule on arrears or reimbursement and current support obligations, the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. If the judicial review results in a finding that the individual has complied with or is no longer subject to the subpoena that was the basis for the revocation, then the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. In the event of an appeal from judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.

(l) The Department of Health and Human Services shall prescribe forms for use by the designated representative. When the individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that, for the purposes of this section, the individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section.

(m) The Department of Health and Human Services may enter into interagency agreements with the boards necessary to implement this section.

(n) The procedures specified in Articles 3 and 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall not apply to the denial or failure to issue or renew a license pursuant to this section.

(o) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or revoked under this section shall respond only that the license was denied or revoked pursuant to this section. Information collected pursuant to this section shall be confidential and shall not be disclosed except in accordance with the laws of this State.

(p) If any provision of this section or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Notes

See also G.S. 110-142. This section applies only to IV-D cases.

G.S.110-142.2. Suspension, revocation, restriction of license to operate a motor vehicle or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.

(a) Effective December 1, 1996, notwithstanding any other provision of law, when an individual is at least 90 days in arrears in making child support payments, or has been found by the court to be not in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings, the child support enforcement agency may apply to the court, pursuant to the regular show cause and contempt provisions of G.S. 50-13.9(d), for an order doing any of the following:

(1) Revoking the individual's regular or commercial license to operate a motor vehicle;
(2) Revoking the individual's hunting, fishing, or trapping licenses;
(3) Directing the Department of Transportation, Division of Motor Vehicles, to refuse, pursuant to G.S. 20-50.4, to register the individual's motor vehicle.

(b) Upon finding that the individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed to comply with the subpoena, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. If an individual is adjudicated to be in civil or criminal contempt for a third or subsequent time for failure to comply with a child support order, the court shall enter an order instituting any one or more of the sanctions, if applicable, as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any court-ordered payment plan under this subsection shall require the individual to extinguish the delinquency within a reasonable period of time. In determining the amount to be applied to the delinquency, the court shall consider the amount of the debt and the individual's financial ability to pay. The payment shall not exceed the limits under G.S. 110-136.6(b). The individual shall make an immediate initial payment representing at least five percent (5%) of the total delinquency or five hundred dollars ($500.00), whichever is less. Any stay of an order under this subsection shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the individual shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order.

(c) If the individual's regular or commercial drivers license is revoked under this section and the court, after the hearing, makes a finding that a license to operate a motor vehicle is necessary to the individual's livelihood, the court may issue a limited driving privilege, with those terms and conditions applying as the court shall prescribe. An individual whose license has been revoked for reasons not related to this section and whose license remains revoked at the time of the hearing shall not be eligible and may not be issued a limited driving privilege. The court may modify or revoke the limited driving privilege pursuant to G.S. 20-179.3(i).

(d) An individual may file a request with the child support enforcement agency for certification that the individual is no longer delinquent in child support payments upon submission of proof satisfactory to the child support enforcement agency that the individual has paid the delinquent amount in full. An individual subject to a subpoena issued pursuant to a child support or paternity establishment proceeding may file a request with the child support enforcement agency for certification that the individual has complied with or is no longer subject to the subpoena. The child support enforcement agency shall provide a form to be used by the individual for a request for certification. If the child support enforcement agency finds that the

individual has met the requirements for reinstatement under this subsection, then the child support enforcement agency shall certify that the individual is no longer delinquent or that the individual has complied with or is no longer subject to a subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the individual.

(e) If licensing privileges are revoked under this section, the individual may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over time, or, as applicable, may order the reinstatement if the court finds that the individual has complied with or is no longer subject to the subpoena issued pursuant to paternity establishment proceedings. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. Upon reinstatement under this subsection, the child support enforcement agency shall certify that the individual is no longer delinquent, or, as applicable, that the individual has complied with or is no longer subject to the subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the individual, as applicable.

(f) Upon receipt of certification under subsection (d) or (e) of this section, the Division of Motor Vehicles shall reinstate the license to operate a motor vehicle in accordance with G.S. 20-24.1, and remove any restriction of the individual's motor vehicle registration.

(g) Upon receipt of certification under subsection (d) or (e) of this section, the licensing board having jurisdiction over the individual's hunting, fishing, or trapping license shall reinstate the license.

(h) If the court imposes sanctions under subdivision (3) of subsection (a) of this section and the sanctions are stayed upon conditions as provided in subsection (b) of this section, the child support enforcement agency may, without any further application to the court, notify the Division of Motor Vehicles if the individual violates the terms and conditions of the stay. The Division shall then take such action as provided in subdivision (3) of subsection (a) of this section. The Division shall not remove any restriction of the individual's motor vehicle registration, until receipt of certification pursuant to subsection (d) or (e) of this section.

(i) The Department of Health and Human Services, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Environment and Natural Resources shall work together to develop the forms and procedures necessary for the implementation of this process.

Notes

See also G.S. 50-13.12 (license revocation); G.S. 50-13.9(d). This section applies only to IV-D cases. The 1999 amendments to this section (establishing requirements for payment plans when license revocation is suspended and requiring license revocation when an obligor has been found in contempt for a third or subsequent time) were effective October 1, 1999.

Chapter 130A
Public Health

Article 4
Vital Statistics

G.S. 130A-101. Birth registration.

* * *

(e) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered. The surname of the child

shall be the same as that of the husband, except that upon agreement of the husband and mother, or upon agreement of the mother and father if paternity has been otherwise determined, any surname may be chosen.

(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father;
(2) A sworn statement by the father declaring that he believes he is the natural father of the child;
(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and
(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate and shall be presumed to be the natural father of the child, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. A certified copy of the affidavit shall be admissible in any action to establish paternity. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2).

(g) Each parent shall provide his or her social security number to the person responsible for preparing and filing the certificate of birth.

Notes

See also G.S. 110-132; 42 U.S.C. § 666(a)(5)(C) (federal requirements regarding voluntary paternity acknowledgment process).

Unlike the execution of a voluntary paternity acknowledgment under G.S. 110.132, the execution of an affidavit of paternity under this section creates only a presumption of paternity and does not, in and of itself, have the effect of a judgment establishing paternity for the purpose of child support.

The presumption (arising under common law and recognized in G.S. 130A-101(e)) that the husband of a woman who conceives or gives birth to a child during the course of their marriage is the child's father may be rebutted by evidence regarding nonaccess between the husband and wife at the time of conception (including evidence that the wife was living in open adultery at that time); evidence that the husband was impotent at the time the child was conceived; or genetic evidence establishing that the husband could not be the child's biological father. *See* Wake County *ex rel*. Manning v. Green, 53 N.C. App. 26, 279 S.E.2d 901 (1981); Cole v. Cole, 74 N.C. App. 247, 328 S.E.2d 446 (1985); Ray v. Ray, 219 N.C. 217, 13 S.E.2d 224 (1941); Wright v. Gann, 27 N.C. App. 45, 217 S.E.2d 761 (1975); Wright v. Wright, 281 N.C. 159, 188 S.E.2d 317 (1972).

Two cases (Chambers v. Chambers, 43 N.C. App. 361, 258 S.E.2d 822 (1979) and Myers v. Myers, 39 N.C. App. 201, 249 S.E. 2d 853 (1978)) have held (in the context of the legitimation or attempted legitimation of an illegitimate child by marriage of the child's mother and reputed father pursuant to G.S. 49-12) that the putative father of an illegitimate child is estopped from denying his paternity of that child if he has previously executed a sworn statement acknowledging his paternity of the child. Despite the holdings in these cases, however, it is clear that the facts in *Chambers* and *Myers* did not satisfy the required elements for equitable estoppel under North Carolina law. See Keech v. Hendricks, 141 N.C. App. 649, 540 S.E.2d 71 (2000) (a claim or defense based on equitable estoppel generally requires (a) a false statement by the person against whom estoppel is asserted, (b) actual or constructive knowledge by that person of the real facts, (c) an intent by that person that the false statement be relied upon, (d) lack of knowledge with respect to the real facts on the part of the person who is asserting estoppel, (e) reliance by that person on the false statement, and (f) a detrimental change in position by that person based on the false statement). Similarly, the sworn statement of a putative father acknowledging paternity of an illegitimate child under G.S. 110-1332 or G.S. 130A-101(f), in and of itself, will rarely satisfy the requirements for equitable estoppel on the issue of paternity. It is therefore not at all clear that North Carolina recognizes claims of "paternity by estoppel" based on the words or deeds of a putative father who is not a child's biological or adoptive parent (as opposed to the establishment of paternity via a final judgment that has previously determined that a putative father is a child's biological father and precludes the putative father from denying paternity in a subsequent legal proceeding through the doctrines of res judicata or collateral estoppel).

G.S. 130A-118. Amendment of birth and death certificates.

(a) After acceptance for registration by the State Registrar, no record made in accordance with this Article shall be altered or changed, except by a request for amendment. The State Registrar may adopt rules governing the form of these requests and the type and amount of proof required.

(b) A new certificate of birth shall be made by the State Registrar when:

(1) Proof is submitted to the State Registrar that the previously unwed parents of a person have intermarried subsequent to the birth of the person;

(2) Notification is received by the State Registrar from a clerk of a court of competent jurisdiction of a judgment, order or decree disclosing different or additional information relating to the parentage of a person;

(3) Satisfactory proof is submitted to the State Registrar that there has been entered in a court of competent jurisdiction a judgment, order or decree disclosing different or additional information relating to the parentage of a person; or

(4) A written request from an individual is received by the State Registrar to change the sex on that individual's birth record because of sex reassignment surgery, if the request is accompanied by a notarized statement from the physician who performed the sex reassignment surgery or from a physician licensed to practice medicine who has examined the individual and can certify that the person has undergone sex reassignment surgery.

(c) A new birth certificate issued under subsection (b) may reflect a change in surname when:

(1) A child is legitimated by subsequent marriage and the parents agree and request that the child's surname be changed; or

(2) A child is legitimated under G.S. 49-10 and the parents agree and request that the child's surname be changed, or the court orders a change in surname after determination that the change is in the best interests of the child.

(d) For the amendment of a certificate of birth or death after its acceptance for filing, or for the making of a new certificate of birth under this Article, the State Registrar shall be entitled to a fee not to exceed seven dollars and fifty cents ($7.50) to be paid by the applicant.

(e) When a new certificate of birth is made, the State Registrar shall substitute the new certificate for the certificate of birth then on file, and shall forward a copy of the new certificate to the registrar of deeds of the county of birth. The copy of the certificate of birth on file with the register of deeds, if any, shall be forwarded to the State Registrar within five days. The State Registrar shall place under seal the original certificate of birth, the copy forwarded by the register of deeds and all papers relating to the original certificate of birth. The seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of the person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth.

Notes

See also G.S. 49-13.

G.S. 130A-119. Clerk of Court to furnish State Registrar with facts as to paternity of illegitimate children judicially determined.

Upon the entry of a judgment determining the paternity of an illegitimate child, the clerk of court of the county in which the judgment is entered shall notify the State Registrar in writing of the name of the person against whom the judgment has been entered, together with the other facts disclosed by the record as may assist in identifying the record of the birth of the child as it appears in the office of the State Registrar. If the judgment is modified or vacated, that fact shall be reported by the clerk to the State Registrar in the same manner. Upon receipt of the notification, the State Registrar shall record the information upon the birth certificate of the illegitimate child.

Notes

See also G.S. 49-13.

Chapter 143B
Executive Organization Act of 1973

Article 3
Department of Health and Human Services

G.S. 143B-153. Social Services Commission — creation, powers and duties.

There is hereby created the Social Services Commission of the Department of Health and Human Services with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. . . .

* * *

(8) The Commission may establish by regulation . . . rates or fees for:

* * *

a. Child support enforcement services as defined by G.S. 110-130.1.

Notes

See G.S. 110-130.1(a) (establishing fee for child support enforcement (IV-D) services).

State rules regarding the child support enforcement (IV-D) program are codified in 10A N.C. Administrative Code 71T.0101 through 71T.0104.

Chapter 150B
Administrative Procedure Act

Article 1
General Provisions

G.S. 150B-3. Special provisions on licensing.

* * *

(d) This section does not apply to the following:

(1) Revocations of occupational licenses based solely on a court order of child support delinquency or a Department of Health and Human Services determination of child support delinquency issued pursuant to G.S. 110-142, 110-142.1, or 110-142.2.

* * *

Notes

See also G.S. 110-142 through G.S. 110-142.2.

North Carolina Child Support Guidelines

North Carolina Child Support Guidelines

Introduction

Section 50-13.4 of the North Carolina General Statutes requires the Conference of Chief District Judges to prescribe uniform statewide presumptive guidelines for determining the child support obligations of parents, and to review the guidelines periodically (at least once every four years) to determine whether their application results in appropriate child support orders.

These revised guidelines are the product of the ongoing review process conducted by the Conference of Chief District Judges. The Conference conducted a public hearing to provide interested citizens an opportunity to comment on the guidelines and also considered written comments from agencies, attorneys, judges and members of the public.

Notes

North Carolina's Child Support Guidelines were revised by the Conference of Chief District Court Judges on June 17, 2002. The revised Guidelines are effective October 1, 2002, and apply to new or modified child support orders entered on or after October 1, 2002.

Applicability and Deviation

North Carolina's child support guidelines apply as a rebuttable presumption in all legal proceedings involving the child support obligation of a parent (including orders entered in criminal and juvenile proceedings, orders entered in UIFSA proceedings, and voluntary support agreements and consent orders approved by the court). The guidelines do not apply to orders for "prior maintenance" (reimbursement of child-related expenses incurred prior to the date an action for child support is filed) or child support orders entered against stepparents or other persons or agencies who are secondarily liable for child support.

The guidelines must be used when the court enters a temporary or permanent child support order in a non-contested case or a contested hearing.

The court upon its own motion or upon motion of a party may deviate from the guidelines if, after hearing evidence and making findings regarding the reasonable needs of the child for support and the relative ability of each parent to provide support, it finds by the greater weight of the evidence that application of the guidelines would not meet, or would exceed, the reasonable needs of the child considering the relative ability of each parent to provide support, or would otherwise be unjust or inappropriate. If the court deviates from the guidelines, the court must make written findings (1) stating the amount of the supporting parent's presumptive child support obligation determined pursuant to these guidelines; (2) determining the reasonable needs of the child and the relative ability of each parent to provide support; (3) supporting the court's conclusion that the presumptive amount of child support determined under the guidelines is inadequate or excessive or that application of the guidelines is otherwise unjust or inappropriate; and (4) stating the basis on which the court determined the amount of child support ordered. (One example of a reason to deviate may be when one parent pays 100% of the child support obligation and 100% of the insurance premium.)

The guidelines are intended to provide adequate awards of child support that are equitable to the child and both of the child's parents. When the court does not deviate from the guidelines, an order for child support in an amount determined pursuant to the guidelines is conclusively presumed to meet the reasonable needs of a child considering the relative ability of each parent to provide support, and specific findings regarding a child's reasonable needs or the relative ability of each parent to provide support are therefore not required.

Regardless of whether the court deviates from the guidelines or enters a child support order pursuant to the guidelines, the court should consider incorporating in, or attaching to, its order, or including in the case file, the child support worksheet it uses to determine the supporting parent's presumptive child support obligation under the guidelines.

Notes

District courts are required to use the North Carolina Child Support Guidelines when entering civil or criminal orders for child support, approving voluntary support agreements, and approving or incorporating separation agreements or consent orders involving child support. The guidelines, however, do not apply to claims for "retroactive child support" or "prior maintenance," nor do they apply to the child support obligation of a stepparent or other party who is secondarily liable for child support. *See* Lawrence v. Tise, 107 N.C. App. 140, 419 S.E.2d 176 (1992); Duffey v. Duffey, 113 N.C. App. 382, 438 S.E.2d 445 (1994); Stanley v. Stanley, 118 N.C. App. 311, 454 S.E.2d 701 (1995). *See also* Pataky v. Pataky, ___ N.C. App. ___, ___ S.E.2d ___ (2003) (holding that child support guidelines do not apply in cases involving initial establishment of a child support order if child support has been determined by the parties under a valid *unincorporated* separation agreement and a party has not rebutted the presumption (established under Fuchs v. Fuchs, 260 N.C. 635, 133 S.E.2d 487 (1963)) that the amount of child support payable under the agreement is just and reasonable).

An award of child support in the amount determined consistently with these guidelines is conclusively presumed to meet the reasonable needs of the child commensurate with the relative ability of each parent to pay support. Additional findings regarding the child's needs and the parents' ability to support the child are not required when the court enters a child support order based on the guidelines. *See* Buncombe County *ex rel*. Blair v. Jackson, 138 N.C. App. 284, 531 S.E.2d 240 (2000). When the trial court enters a child support order that is based on or deviates from the child support guidelines, it should attach or incorporate the child support guidelines worksheet used to determine the amount of the obligor's presumptive obligation under the child support guidelines or include the worksheet in the case file. *See also* G.S. 52C-3-305(c) (a child support order entered in a Uniform Interstate Family Support Act [UIFSA] proceeding must include the calculations upon which the order is based); Hodges v. Hodges, 147 N.C. App. 748, 556 S.E.2d 7 (2001).

Absent a timely request by a party, the court is not required to deviate from the guidelines, nor is it required to take any evidence, make any findings of fact, or enter any conclusions of law relating to the reasonable needs of the child for support and the relative ability of each parent to pay or provide support. *See* Browne v. Browne, 101 N.C. App. 617, 400 S.E.2d 736 (1991). The guidelines, however, allow the court, on its own motion, to deviate from them if application of the guidelines would be unjust or inappropriate, would not meet or would exceed the reasonable needs of the child, or would be inconsistent with the parents' ability to support the child.

If a court orders a parent to pay child support in an amount that is greater than or less than the amount determined under the child support guidelines, it must make findings regarding the amount of support that would be due under the guidelines; the reasonable needs of the child and the relative ability of each parent to provide support; the amount of support required to meet the reasonable needs of the child considering the relative ability of each parent to provide support; and whether the amount of support under the guidelines would meet or exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would otherwise be unjust or inappropriate. *See* Sain v. Sain, 134 N.C. App. 460, 517 S.E.2d 921 (1999); Brooker v. Brooker, 133 N.C. App. 285, 515 S.E.2d 234 (1999); Rowan County *ex rel*. Brooks v. Brooks, 135 N.C. App. 776, 522 S.E.2d 590 (1999).

Self-Support Reserve; Supporting Parents With Low Incomes

The Guidelines include a self-support reserve that ensures that obligors have sufficient income to maintain a minimum standard of living based on the 2002 federal poverty level for one person ($738.00 net per month). For obligors with an adjusted gross income of less than $800, the Guidelines require, absent a deviation, the establishment of a minimum support order ($50). For obligors with adjusted gross incomes above $800, the Schedule of Basic Support Obligations incorporates a further adjustment to maintain the self-support reserve for the obligor.

If the obligor's adjusted gross income falls within the shaded area of the Schedule and Worksheet A is used, the basic child support obligation and the obligor's total child support obligation are computed using only the obligor's income. In these cases, childcare and health insurance premiums should not be used to calculate the child support obligation. However, payment of these costs by either parent may be a basis for deviation. This approach prevents disproportionate increases in the child support obligation with moderate increases in income and protects the integrity of the self-support reserve. In all other cases, the basic child support obligation is computed using the combined adjusted gross incomes of both parents.

Notes

See Buncombe County *ex rel.* Blair v. Jackson, 138 N.C. App. 284, 531 S.E.2d 240 (2000); Hodges v. Hodges, 147 N.C. App. 748, 556 S.E.2d 7 (2001).

The 2002 amendments to the North Carolina Child Support Guidelines clarified that the self-support reserve incorporated into the shaded area of the Schedule of Basic Child Support Obligations can be used only in cases in which the obligor's child support obligation is calculated using Worksheet A. In such cases, unless the court deviates from the guidelines, a low-income obligor's total child support obligation is determined without consideration of child care expenses, health insurance premiums, or other additional child-related expenses paid by either parent. Determination Of Support In Cases Involving High Combined Income

In cases in which the parents' combined adjusted gross income is more than $20,000 per month ($240,000 per year), the supporting parent's basic child support obligation cannot be determined by using the child support schedule.

In cases in which the parents' combined income is above $20,000 per month, the court should, on a case by case basis, consider the reasonable needs of the child(ren) and the relative ability of each parent to provide support. The schedule of basic child support may be of assistance to the court in determining a minimal level of child support.

Notes

See Bookholt v. Bookholt, 136 N.C. App. 247, 523 S.E.2d 729 (1999).

Assumptions And Expenses Included In Schedule Of Basic Child Support Obligations

North Carolina's child support guidelines are based on the "income shares" model, which was developed under the Child Support Guidelines Project funded by the U.S. Office of Child Support Enforcement and administered by the National Center for State Courts. The income shares model is based on the concept that child support is a shared parental obligation and that a child should receive the same proportion of parental income he or she would have received if the child's parents lived together. The schedule of basic child support obligations is based primarily on economic research performed pursuant to the Family Support Act of 1988 [P.L. 100-485, § 128], which required the U.S. Department of Health and Human Services to conduct a study of the patterns of expenditures on children. The schedule has been updated based on changes in the consumer price index, changes in federal and state tax rates, and other data.

The child support schedule that is a part of the guidelines is based on economic data which represent adjusted estimates of average total household spending for children between birth and

age 18, excluding child care, health insurance, and health care costs in excess of $100 per year. Expenses incurred in the exercise of visitation are not factored into the schedule.

The schedule assumes that the parent who receives child support claims the tax exemptions for the child. If the parent who receives child support has minimal or no income tax liability, the court may consider requiring the custodial parent to assign the exemption to the supporting parent and deviate from the guidelines.

Notes

A trial court may order the custodial parent to waive the federal and state income tax exemption for a child when the custodial parent is not liable for federal or state income tax and the noncustodial parent is ordered to pay child support and is liable for federal or state income tax. *See* Rowan County *ex rel*. Brooks v. Brooks, 135 N.C. App. 776, 522 S.E.2d 590 (1999).

Income

The Schedule of Basic Child Support Obligations is based upon net income converted to gross annual income by incorporating the federal tax rates, North Carolina tax rates and FICA. Gross income is income before deductions for federal or state income taxes, Social Security or Medicare taxes, health insurance premiums, retirement contributions, or other amounts withheld from income.

(1) ***Gross Income.*** "Income" means a parent's actual gross income from any source, including but not limited to income from employment or self-employment (salaries, wages, commissions, bonuses, dividends, severance pay, etc.), ownership or operation of a business, partnership, or corporation, rental of property, retirement or pensions, interest, trusts, annuities, capital gains, social security benefits, workers compensation benefits, unemployment insurance benefits, disability pay and insurance benefits, gifts, prizes and alimony or maintenance received from persons other than the parties to the instant action. When income is received on an irregular, non-recurring, or one-time basis, the court may average or pro-rate the income over a specified period of time or require an obligor to pay as child support a percentage of his or her non-recurring income that is equivalent to the percentage of his or her recurring income paid for child support.

Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps and General Assistance.

Social security benefits received for the benefit of a child as a result of the disability or retirement of either parent are included as income attributed to the parent on whose earnings record the benefits are paid, but are deducted from that parent's child support obligation.

Except as otherwise provided, income does not include the income of a person who is not a parent of a child for whom support is being determined regardless of whether that person is married to or lives with the child's parent or has physical custody of the child.

(2) ***Income from self-employment or operation of a business.*** Gross income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Ordinary and necessary business expenses do not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes.

Expense reimbursements or in-kind payments (for example, use of a company car, free housing, or reimbursed meals) received by a parent in the course of employment, self-

employment, or operation of a business are counted as income if they are significant and reduce personal living expenses.

(3) ***Potential or Imputed Income.*** If either parent is voluntarily unemployed or underemployed to the extent that the parent cannot provide a minimum level of support for himself or herself and his or her children when he or she is physically and mentally capable of doing so, and the court finds that the parent's voluntary unemployment or underemployment is the result of a parent's bad faith or deliberate suppression of income to avoid or minimize his or her child support obligation, child support may be calculated based on the parent's potential, rather than actual, income. Potential income may not be imputed to a parent who is physically or mentally incapacitated or is caring for a child who is under the age of three years and for whom child support is being determined.

The amount of potential income imputed to a parent must be based on the parent's employment potential and probable earnings level based on the parent's recent work history, occupational qualifications and prevailing job opportunities and earning levels in the community. If the parent has no recent work history or vocational training, potential income should not be less than the minimum hourly wage for a 40-hour work week.

(4) ***Income Verification.*** Child support calculations under the guidelines are based on the parents' current incomes at the time the order is entered. Income statements of the parents should be verified through documentation of both current and past income. Suitable documentation of current earnings (at least one full month) includes pay stubs, employer statements, or business receipts and expenses, if self-employed. Documentation of current income must be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. Sanctions may be imposed for failure to comply with this provision on the motion of a party or by the court on its own motion.

Notes

The 2002 amendments to the North Carolina Child Support Guidelines revised the treatment of Social Security benefits received by or for a child on the earnings record of a disabled or retired parent.

A parent's child support obligation under these guidelines should be based on his or her *actual* income at the time the order is entered. *See* Sharpe v. Nobles, 127 N.C. App. 705, 493 S.E.2d 288 (1997); Hodges v. Hodges, 147 N.C. App. 748, 556 S.E.2d 7 (2001). The 2002 amendments to the North Carolina Child Support Guidelines incorporate the holdings in several recent appellate cases prohibiting trial courts from imputing income to a parent absent evidence and findings that the parent has acted in bad faith by deliberately suppressing his or her income. *See* Burnett v. Wheeler, 128 N.C. App. 174, 493 S.E.2d 804 (1997); Kowalick v. Kowalick, 129 N.C. App. 781, 501 S.E.2d 671 (1998); Chused v. Chused, 131 N.C. App. 668, 508 S.E.2d 559 (1998); Sharpe v. Nobles, 127 N.C. App. 705, 493 S.E.2d 288 (1997); Bowers v. Bowers, 141 N.C. App. 729, 541 S.E.2d 508 (2001); Wolf v. Wolf, 151 N.C. App. 523, 566 S.E.2d 516 (2002); King v. King, 153 N.C. App. 181, 568 S.E.2d 864 (2002); Mason v. Erwin, ___ N.C. App. ___, 579 S.E.2d 120 (2003); Cook v. Cook, ___ N.C. App. ___, 583 S.E.2d 696 (2003). *Cf.* Ellis v. Ellis, 126 N.C. App. 362, 485 S.E.2d 92 (1997); Osborne v. Osborne, 129 N.C. App. 34, 497 S.E.2d 113 (1998).

An obligor's income from a Subchapter S corporation may be considered in determining his or her child support obligation. *See* Barham v. Barham, 127 N.C. App. 20, 487 S.E.2d 774 (1997); Cauble v. Cauble, 133 N.C. App. 390, 515 S.E.2d 708 (1999).

The trial court may refuse to allow deductions for business expenses related to depreciation and bad debts. *See* Cauble v. Cauble, 133 N.C. App. 390, 515 S.E.2d 708 (1999). *See also*

Kennedy v. Kennedy, 107 N.C. App. 695, 421 S.E.2d 795 (1992) (business expenses); Lawrence v. Tise, 107 N.C. App. 140, 419 S.E.2d 176 (1992) (business expenses).

Contributions by a third party to a child's support may be a basis for deviating from the child support guidelines. *See* Guilford County *ex rel.* Easter v. Easter, 344 N.C. 166, 473 S.E.2d 6 (1996); *cf.* State *ex rel.* Horne v. Horne, 127 N.C. App. 387, 489 S.E.2d 431 (1997). *See also* Leary v. Leary, 152 N.C. App. 438, 567 S.E.2d 834 (2002) (court may consider fair rental value of automobile that an employer provides for parent's personal use in determining amount of parent's income under child support guidelines).

Pre-Existing Support Obligations And Responsibility For Other Children

Child support payments actually made by a parent under any pre-existing court order, separation agreement or voluntary support arrangement are deducted from the parent's gross income. The court may consider a voluntary support arrangement as a pre-existing child support obligation when the supporting parent has consistently paid child support for a reasonable and extended period of time. A pre-existing support order is one that is in effect at the time a child support order in the pending action is entered or modified, regardless of whether the child or children for whom support is being paid were born before or after the child or children for whom support is being determined. Actual payments of alimony should not be considered as a deduction from gross income but may be considered as a factor to vary from the final presumptive child support obligation.

A parent's financial responsibility (as determined below) for his or her natural or adopted children who currently reside with the parent (other than children for whom child support is being determined in the pending action) is deducted from the parent's gross income. Use of this deduction is appropriate when a child support order is entered or modified, but may not be the sole basis for modifying an existing order.

A parent's financial responsibility for his or her natural or adopted children who currently reside with the parent (other than children for whom child support is being determined in the pending action) is (a) equal to the basic child support obligation for these children based on the parent's income if the other parent of these children does not live with the parent and children; or (b) one-half of the basic child support obligation for these children based on the combined incomes of both of the parents of these children if the other parent of these children lives with the parent and children.

Notes

See Buncombe County *ex rel.* Blair v. Jackson, 138 N.C. App. 284, 531 S.E.2d 240 (2000) (deduction from income for child support payments under pre-existing child support orders). Hodges v. Hodges, 147 N.C. App. 748, 556 S.E.2d 7 (2001).

The 2002 amendments to the North Carolina Child Support Guidelines revised the manner in which a parent's financial responsibility for the parent's children who live with the parent is determined when the children's other parent does not live with that parent and the children.

Basic Child Support Obligation

The basic child support obligation is determined using the attached schedule of basic child support obligations. For combined monthly adjusted gross income amounts falling between amounts shown in the schedule the basic child support obligation should be interpolated.

The number of children refers to children for whom the parents share joint legal responsibility and for whom support is being sought.

Child Care Costs

Reasonable child care costs that are, or will be, paid by a parent due to employment or job search are added to the basic child support obligation and prorated between the parents based on their respective incomes.

When the gross monthly income of the parent paying child care costs falls below the amounts indicated below, 100% of child care costs are added.

1 child = $1,100
2 children = $1,500
3 children = $1,700
4 children = $1,900
5 children = $2,100
6 children = $2,300

At these income levels, the parent who pays child care costs does not benefit from the tax credit for child care. When the income of the parent who pays child care costs exceeds the amounts indicated above, only 75% of actual child care costs are added (because the parent is entitled to the income tax credit for child care expenses).

Notes

The portion of child care expenses paid through government subsidies on behalf of a parent or custodian is not considered in determining a parent's child support obligation.

The 2002 amendments to the North Carolina Child Support Guidelines provide that employment-related child care costs are not considered when determining a low-income obligor's child support obligation using Worksheet A and the shaded area of the Schedule of Basic Child Support Obligations.

When employment-related child care expenses are paid by a nonparent who has custody of a child and is seeking child support from one or both of the child's parents, the expenses are added to the parents' basic child support obligation and prorated between the parents based on their respective incomes. Employment-related child care expenses paid by a child's custodian rather than a parent are not deducted from either parent's obligation.

Health Insurance and Health Care Costs

The amount that is, or will be, paid by a parent for health (medical, or medical and dental) insurance for the children for whom support is being determined is added to the basic child support obligation and prorated between the parents based on their respective incomes. Payments that are made by a parent's employer for health insurance and are not deducted from the parent's wages are not included. When a child for whom support is being determined is covered by a family policy, only the health insurance premium actually attributable to that child is added. If this amount is not available or cannot be verified, the total cost of the premium is divided by the total number of persons covered by the policy and then multiplied by the number of covered children for whom support is being determined.

The court may order that uninsured medical or dental expenses in excess of $250 (formerly $100) per year or other uninsured health care costs (including reasonable and necessary costs related to orthodontia, dental care, asthma treatments, physical therapy, treatment of chronic health problems, and counseling or psychiatric therapy for diagnosed mental disorders) be paid by the parents in proportion to their respective incomes.

The court may order either parent to obtain and maintain health (medical or medical and dental) insurance coverage for a child if it is actually and currently available to the parent at a reasonable cost. Health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of delivery mechanism. If health insurance is not actually and currently available to a parent at a reasonable cost at the time the court orders child support,

the court may enter an order requiring the parent to obtain and maintain health insurance for a child if and when the parent has access to reasonably-priced health insurance for the child.

Notes

See G.S. 50-13.11; Buncombe County *ex rel*. Blair v. Jackson, 138 N.C. App. 284, 531 S.E.2d 240 (2000); Buncombe County *ex rel*. Frady v. Rogers, 148 N.C. App. 401, 559 S.E.2d 227 (2002). The last sentence of this section was added in 2002 in response to the court of appeals' decision in Buncombe County *ex rel*. Frady v. Rogers. *See also* the 2003 amendment to G.S. 50-13.11(a1).

The 2002 amendments to the North Carolina Child Support Guidelines provide that health insurance premiums and child-related medical expenses are not considered when determining a low-income obligor's child support obligation using Worksheet A and the shaded area of the Schedule of Basic Child Support Obligations.

When child-related health insurance premiums or expenses are paid by a nonparent who has custody of a child and is seeking child support from one or both of the child's parents, the expenses are added to the parents' basic child support obligation and prorated between the parents based on their respective incomes. Child-related health insurance premiums paid by a child's custodian rather than a parent are not deducted from either parent's obligation.

Other Extraordinary Expenses

Other extraordinary child-related expenses (including 1. expenses related to special or private elementary or secondary schools to meet a child's particular educational needs, and 2. expenses for transporting the child between the parents' homes) may be added to the basic child support obligation and ordered paid by the parents in proportion to their respective incomes if the court determines the expenses are reasonable, necessary, and in the child's best interest.

Notes

See Mackins v. Mackins, 114 N.C. App. 538, 442 S.E.2d 352 (1994); Biggs v. Greer, 136 N.C. App. 294, 524 S.E.2d 577 (2000); Doan v. Doan, 156 N.C. App. 570, 577 S.E.2d 146 (2003) (holding that trial judges have discretion in determining what constitutes an extraordinary child-related expense but that allowance of extraordinary expenses must be supported by sufficient findings and evidence).

The 2002 amendments to the North Carolina Child Support Guidelines provide that additional child-related expenses are not considered when determining a low-income obligor's child support obligation using Worksheet A and the shaded area of the Schedule of Basic Child Support Obligations.

When additional child-related expenses are paid by a nonparent who has custody of a child and is seeking child support from one or both of the child's parents, the expenses are added to the parents' basic child support obligation and prorated between the parents based on their respective incomes. Additional child-related expenses paid by a custodian rather than a parent are not deducted from either parent's obligation

Child Support Worksheets

A parent's presumptive child support obligation under the guidelines must be determined using one of the attached child support worksheets.

The child support worksheets must include the incomes of both parents, regardless of whether one parent is seeking child support from the other parent or a third party is seeking child support from one or both parents. The child support worksheets may not be used to calculate the child support obligation of a stepparent or other party who is secondarily liable for child support. Do

not include the income of an individual who is not the parent of a child for whom support is being determined on the worksheets.

Use Worksheet A when one parent (or a third party) has primary physical custody of all of the children for whom support is being determined. A parent (or third party) has primary physical custody of a child if the child lives with that parent (or custodian) for at least 242 nights during the year. Primary physical custody is determined without regard to whether a parent has primary, shared, or joint legal custody of a child. Do not use Worksheet A when (a) a parent has primary custody of one or more children and the parents share custody of one or more children [instead, use Worksheet B] or (b) when primary custody of two or more children is split between the parents [instead, use Worksheet C]. In child support cases involving primary physical custody, a child support obligation is calculated for both parents but the court enters an order requiring the parent who does not have primary physical custody of the child to pay child support to the parent or other party who has primary physical custody of the child.

Use Worksheet B when (a) the parents share custody of all of the children for whom support is being determined, or (b) when one parent has primary physical custody of one or more of the children and the parents share custody of another child. Parents share custody of a child if the child lives with each parent for at least 123 nights during the year and each parent assumes financial responsibility for the child's expenses during the time the child lives with that parent. A parent does not have shared custody of a child when that parent has visitation rights that allow the child to spend less than 124 nights per year with the parent and the other parent has primary physical custody of the child. Shared custody is determined without regard to whether a parent has primary, shared, or joint legal custody of a child. Do not apply the self-sufficiency reserve incorporated into the shaded area of the schedule when using Worksheet B.

In cases involving shared custody, the parents' combined basic support obligation is increased by 50% (multiplied by 1.5) and is allocated between the parents based on their respective incomes and the amount of time the children live with the other parent. The adjustment based on the amount of time the children live with the other parent is calculated for all of the children regardless of whether a parent has primary, shared, or split custody of a child. After child support obligations are calculated for both parents, the parent with the higher child support obligation is ordered to pay the difference between his or her presumptive child support obligation and the other parent's presumptive child support obligation.

Use Worksheet C when primary physical custody of two or more children is split between the parents. Split custody refers to cases in which one parent has primary custody of at least one of the children for whom support is being determined and the other parent has primary custody of the other child or children. Do not use Worksheet C when the parents share custody of one or more of the children and have primary physical custody or split custody of another child [instead, use Worksheet B]. The parents' combined basic support obligation is allocated between the parents based on their respective incomes and the number of children living with each parent. After child support obligations are calculated for both parents, the parent with the higher child support obligation is ordered to pay the difference between his or her presumptive child support obligation and the other parent's presumptive child support obligation. Do not apply the self-sufficiency reserve incorporated into the shaded area of the schedule when using Worksheet C.

Modification

In a proceeding to modify an existing order that is three years old or older, a difference of 15% or more between the amount of the existing order and the amount of child support resulting from application of the guidelines based on the parents' current incomes and circumstances shall be presumed to constitute a substantial change of circumstances warranting modification. If the order is less than three years old, this presumption does not apply.

Notes

See Garrison *ex rel*. Williams v. Connor, 122 N.C. App. 702, 471 S.E.2d 644 (1996) (upholding authority of Conference of Chief District Court Judges to adopt child support guidelines provisions regarding modification of child support).

See Willard v. Willard, 130 N.C. App. 144, 502 S.E.2d 395 (1998).

STATE OF NORTH CAROLINA

_____ County

File No. | IV-D Case No.

Case No. (Code) | UIFSA Case No.

In The General Court Of Justice
☐ District ☐ Superior Court Division

☐ Civil: *Plaintiff* _____
☐ Criminal: **STATE**
VERSUS
Name Of Defendant

WORKSHEET A
CHILD SUPPORT OBLIGATION
PRIMARY CUSTODY

G.S. 50-13.4(c)

Children	Date Of Birth	Children	Date Of Birth

	Plaintiff	Defendant	Combined
1. MONTHLY GROSS INCOME	$	$	
a. Minus pre-existing child support payment	–	–	
b. Minus responsibility for other children	–	–	
2. MONTHLY ADJUSTED GROSS INCOME	$	$	$
3. PERCENTAGE SHARE OF INCOME *(line 2 for each parent's income divided by Combined Income)*	%	%	
4. BASIC CHILD SUPPORT OBLIGATION *(apply line 2 to Combined Child Support Schedule. see AOC-A-162, Rev. 10/02)*			$
5. ADJUSTMENTS *(expenses paid by each parent)* a. Work-related child care costs *(see instructions)*	$	$	
b. Health insurance premium costs-child(ren) portion only *(total premium ÷ # of persons covered x # of children subject to order = children's portion)*	$	$	
c. Extraordinary expense *(note duration at bottom if time for adjustment differs from duration of child support obligation)*	$	$	
d. Total Adjustments *(add two totals for combined*	$	$	$
6. TOTAL CHILD SUPPORT OBLIGATION *(add lines 4 and 5d combined)*			$
7. EACH PARENT'S CHILD SUPPORT OBLIGATION *(line 3 X line 6 for each parent)*	$	$	
8. NON-CUSTODIAL PARENT ADJUSTMENT *(enter non-custodial parent's line 5d)*	$	$	
9. RECOMMENDED CHILD SUPPORT ORDER *(subtract line 8 from line 7 for the non-custodial parent only. Leave custodial parent column blank)*	$	$	

Date | *Prepared By (Type Or Print)*

(NOTE: *This form may be used in both civil and criminal cases.)*

AOC-CV-627, Rev. 10/02

(Over)

INSTRUCTIONS FOR COMPLETING CHILD SUPPORT WORKSHEET A OBLIGEE WITH SOLE CUSTODY OF CHILD(REN)

Worksheet A should be used when the obligee has physical custody of the child(ren) who are involved in the pending action for a period of time that is more than two-thirds of the year (more than 243 days per year). However, if the non-custodial parent's income falls within the shaded area of the Schedule, determine the basic child support obligation based on the non-custodial parent's monthly adjusted gross income, rather than the combined income of both parents, and do not proceed further on the worksheet.

On line 1, enter the monthly gross incomes of both parties in the appropriate column, subtract the payments made by each parent under previous child support orders for other children of that parent and the amount of the parent's financial responsibility for other children living with that parent, and enter the difference (monthly adjusted gross income) for each parent on line 2. Add the monthly adjusted gross incomes of both parents and enter the result in the third column (Combined) on line 2. Divide each parent's monthly adjusted gross income by the combined monthly adjusted income and enter each parent's percentage share of the combined income on line 3.

On line 4, enter the amount of the basic child support obligation for the child(ren) for whom support is sought by using the Schedule of Basic Child Support Obligations based on the combined income of both parents (line 3) and the number of children involved in the pending action.

On lines 5a through 5c, enter the amount of work-related child care costs, health insurance premiums for the child(ren), and extraordinary child-related expenses that are paid by either parent under the column for that parent. On line 5d, enter the sum of lines 5a through 5c for each parent, and in the third column (Combined) enter the total expenses paid by both parents. Add line 4 and line 5d (Combined) and enter the result on line 6 (total child support obligation).

On line 7, multiply line 6 by line 3 (percentage share of income) and enter the result in the appropriate column for each parent. On line 8, enter the amount of expenses paid directly by the non-custodial parent (line 5d) under the appropriate column; leave the custodial parent's column blank and do not enter any amount paid by the custodial parent. Subtract line 8 from line 7 for the non-custodial parent only and enter the difference on line 9 (recommended child support order) under the column for the non-custodial parent. Leave the column for the custodial parent blank.

NOTE TO PLAINTIFF AND DEFENDANT: *The information required to complete the worksheet is known only to the parties. It is the responsibility of the parties to provide this information to the court so that the court can set the appropriate amount of child support. The Clerk of Superior Court CANNOT obtain this information or fill out this worksheet for you. If you need assistance, you may contact an attorney or apply for assistance at the IV-D agency within your county.*

AOC-CV-627, Side Two, Rev. 10/02

STATE OF NORTH CAROLINA

_____ County

File No. | IV-D Case No.

Case No. (Code) | UIFSA Case No.

In The General Court Of Justice
☐ District ☐ Superior Court Division

☐ Civil: Plaintiff _____
☐ Criminal: **STATE**
VERSUS
Name Of Defendant

WORKSHEET B
CHILD SUPPORT OBLIGATION
JOINT OR SHARED
PHYSICAL CUSTODY G.S. 50-13.4(c)

Children	Date Of Birth	Children	Date Of Birth

STOP **STOP HERE IF** *the number of overnights with either parent is less than 123, shared physical custody does not apply (see Worksheet A).*	Plaintiff	Defendant	Combined
1. MONTHLY GROSS INCOME	$	$	
a. Minus pre-existing child support payment	–	–	
b. Minus responsibility for other children	–	–	
2. MONTHLY ADJUSTED GROSS INCOME	$	$	$
3. PERCENTAGE SHARE OF INCOME *(line 2 for each parent's income divided by combined income)*	%	%	
4. BASIC CHILD SUPPORT OBLIGATION *(apply line 2 to Combined Child Support Schedule, see AOC-A-162, Rev. 10/02)*			$
5. SHARED CUSTODY BASIC OBLIGATION *(multiply line 4 x 1.5)*			$
6. EACH PARENT'S PORTION OF SHARED CUSTODY SUPPORT OBLIGATION *(line 3 x line 5 for each)*	$	$	
7. OVERNIGHTS with each parent *(must total 365 x total number of children))*			
8. PERCENTAGE WITH EACH PARENT *(line 7 divided by (365 X total number of children))*	%	%	
9. SUPPORT OBLIGATION FOR TIME WITH OTHER PARENT *(line 6 x other parent's line 8)*	$	$	
10. ADJUSTMENTS *(expenses paid directly by each* a. Work-related child care costs	$	$	
b. Health Insurance premium costs - children's portion only	$	$	
c. Extraordinary expenses	$	$	
d. Total Adjustments *(For each col., add 10a, 10b, and 10c. Add two totals for combined amount.)*	$	$	$
11. EACH PARENT'S FAIR SHARE OF ADJUSTMENTS *(line 10d combined x line 3 for each parent)*	$	$	
12. ADJUSTMENTS PAID IN EXCESS OF FAIR SHARE *(Line 10d minus line 11. If negative number, enter zero.)*	$	$	
13. EACH PARENT'S ADJUSTED SUPPORT OBLIGATION *(Line 9 minus line 12.)*	$	$	
14. RECOMMENDED CHILD SUPPORT ORDER *(subtract lesser amount from greater amount in line 13 and enter result under greater amount.)*	$	$	

Date | Prepared By (Type Or Print)

AOC-CV-628, Rev. 10/02

(NOTE: *This form may be used in both civil and criminal cases.)*

(Over)

INSTRUCTIONS FOR COMPLETING CHILD SUPPORT WORKSHEET B
PARENTS WITH JOINT OR SHARED CUSTODY

Worksheet B should be used when the parents share joint *physical* custody of at least one of the child(ren) for whom support is sought. Legal custody of the child(ren) is not relevant with respect to this determination. Worksheet B should be used if one parent has sole *legal* custody but, in fact, the parents exercise joint physical custody of the child(ren) as defined below. On the other hand, the worksheet should not be used simply because the parents share joint legal custody of the child(ren).

Joint physical custody is defined as custody for at least one-third of the year (more than 122 overnights per year) - not one-third of a shorter period of time, e.g. one-third of a particular month. For example, child support would not be abated merely because the child spends an entire month with one parent during the summer. **Worksheet B should be used only if both parents have custody of the child(ren) for at least one-third of the year and the situation involves a true sharing of expenses, rather than extended visitation with one parent that exceeds 122 overnights.** Parents share custody of a child if the child lives with each parent for at least 123 nights during the year and each parent assumes financial responsibility for the child's expenses during the time the child lives with that parent. A parent does not have shared custody of a child when that parent has visitation rights that allow the child to spend less than 124 nights per year with the parent and the other parent has primary physical custody of the child. Split custody refers to cases in which one parent has primary custody of the other child or children. Child support computations for shared and split custody are determined without regard to whether a parent has primary, shared, or joint legal custody of a child.

In cases involving joint or shared physical custody, the basic child support obligation is multiplied by 1.5 to take into account the increased cost of maintaining two primary homes for the child(ren). Each parent's child support obligation is calculated based on the percentage of time that the child(ren) spends with the *other* parent. The support obligations of both parents are then offset against each other, and the parent with the higher support obligation pays the difference between the two amounts.

Lines 1 through 4 of Worksheet B are calculated in the same manner as lines 1 through 4 of Worksheet A. Multiply line 4 by 1.5 and enter the result on line 5. On line 6, multiply line 5 by each parent's percentage share of income (line 3) and enter the result under the appropriate column for each parent.

On lines 7 and 8, enter the number of nights the child(ren) spend with each parent during the year and calculate the percentage of total overnights spent with each parent. If at least one of the children does not spend at least 123 overnights with each parent, Worksheet B should not be used. The total number of nights should equal 365 times the total number of children. On line 9, multiply plaintiff's line 6 by defendant's line 8 and enter the result under the column for plaintiff, then multiply defendant's line 6 by plaintiff's line 8 and enter the result under the column for defendant.

Lines 10a through 10d of Worksheet B are calculated in the same manner as lines 5a through 5d of Worksheet A. On line 11, multiply line 10d (Combined) by line 3 for each parent and enter the result under the column for that parent. Subtract line 11 from line 10d for each parent and enter the result on line 12 (if negative, enter zero).

Subtract line 12 from line 9 for each parent and enter the result on line 13 under the appropriate column. In some cases, the result may be a *negative* number. If the result is negative, enter it as a negative number on line 13, *not* as a positive number or as a zero. If plaintiff's line 13 is greater than defendant's line 13, enter the difference between these two amounts on line 14 under plaintiff's column and leave defendant's column blank. If defendant's line 13 is greater than plaintiff's line 13, enter the difference between these two amounts on line 14 under defendant's column and leave plaintiff's column blank. [Note that if either of the number on line 13 is a *negative* number, you must change the signs when you subtract. For example, $100 minus negative $50 equals $150.]

NOTE TO PLAINTIFF AND DEFENDANT: *The information required to complete the worksheet is known only to the parties. It is the responsibility of the parties to provide this information to the Court so that the Court can set the appropriate amount of child support. The Clerk of Superior Court CANNOT obtain this information or fill out this worksheet for you. If you need assistance, you may contact an attorney or apply for assistance at the IV-D agency within your county.*

AOC-CV-628, Side Two, Rev. 10/02

Notes

See Maney v. Maney, 126 N.C. App. 429, 485 S.E.2d 351 (1997).

STATE OF NORTH CAROLINA

_____ County

File No. | IV-D Case No.

Case No. (Code) | UIFSA Case No.

In The General Court Of Justice
☐ District ☐ Superior Court Division

☐ Civil: Plaintiff _____
☐ Criminal: **STATE**
VERSUS
Name Of Defendant

WORKSHEET C
CHILD SUPPORT OBLIGATION
SPLIT CUSTODY
G.S. 50-13.4(c)

Children	Date Of Birth	Children	Date Of Birth

	Plaintiff	Defendant	Combined
1. MONTHLY GROSS INCOME	$	$	
a. Minus pre-existing child support payment	–	–	
b. Minus responsibility for other children	–	–	
2. MONTHLY ADJUSTED GROSS INCOME	$	$	$
3. PERCENTAGE SHARE OF INCOME *(line 2 for each parent's income divided by Combined Income)*	%	%	
4. BASIC CHILD SUPPORT OBLIGATION *(apply line 2 to Combined Child Support Schedule, see AOC-A-162, Rev. 10/02)*			$
5a. SPLIT CUSTODY ADJUSTMENT *(enter number of children living with each parent & total number of*			
5b. Number of children with each parent divided by total number of children			
5c. Multiply line 4 x line 5b for each parent	$	$	
6a. PLAINTIFF'S SUPPORT FOR CHILDREN WITH DEFENDANT *(multiply defendant's line 5c x plaintiff's line 3)*	$		
6b. DEFENDANT'S SUPPORT FOR CHILDREN WITH PLAINTIFF *(multiply plaintiff's line 5c x defendant's line 3)*		$	
7a. Work-Related Child Care Costs Adjustments *(expenses paid directly by each parent)*	$	$	
7b. Health Insurance Premium Costs - Children's Portion	$	$	
7c. Extraordinary expenses	$	$	
7d. TOTAL ADJUSTMENTS *(for each column add 7a, 7b,*	$	$	$
8. EACH PARENT'S FAIR SHARE OF ADJUSTMENTS *(line 7d combined x line 3 for each parent)*	$	$	
9. ADJUSTMENTS PAID IN EXCESS OF FAIR SHARE *(Line 7d minus line 8. If negative number, enter zero.)*	$	$	
10. EACH PARENT'S ADJUSTED SUPPORT OBLIGATION *(line 6a or 6b minus line 9 for each*	$	$	
11. RECOMMENDED CHILD SUPPORT ORDER *(subtract lesser amount from greater amount on line 10 and enter result under greater amount)*	$	$	

Date | Prepared By (Type Or Print)

(NOTE: *This form may be used in both civil and criminal cases.)*

AOC-CV-629, Rev. 10/02

(Over)

INSTRUCTIONS FOR COMPLETING CHILD SUPPORT WORKSHEET C SPLIT CUSTODY OF CHILD(REN)

Worksheet C is used when there is more than one child involved in the pending action and each parent has physical custody of at least one of the children.

Lines 1 through 4 of Worksheet C are calculated in the same manner as lines 1 through 4 of Worksheet A. On line 5a, enter the number of children living with each parent and the total number of children for whom support is sought. Divide the number of children living with each parent by the total number of children and enter the result in the appropriate column for each parent on line 5b. (For example, if there are three children of the parties and one child lives with the plaintiff, divide one by three and enter 33.33% in plaintiff's column, then divide two by three and enter 66.67% in defendant's column on line 5b.) Multiply line 4 by line 5b for each parent and enter the results on line 5c.

On line 6a, multiply *defendant's* line 5c by *plaintiff's* line 3 (plaintiff's percentage share of income) and enter the result in the column for *plaintiff*. Multiply *plaintiff's* line 5c by defendant's line 3 and enter the result on line 6b.

Lines 7a through 7d of Worksheet C are calculated in the same manner as lines 5a through 5d of Worksheet A. On line 8, multiply line 7d (Combined) by line 3 for each parent and enter the result under the column for that parent. Subtract line 8 from line 7d for each parent and enter the result on line 9 (if negative, enter zero).

Subtract line 9 from line 6a or 6b for each parent and enter the result on line 10 under the appropriate column. In some cases, the result may be a negative number. If the result is negative, enter it as a negative number on line 10, *not* as a positive number or as a zero. If *plaintiff's* line 10 is *greater* than defendant's line 10, enter the difference between these two amounts on line 11 under *plaintiff's* column and leave defendant's column blank. If *defendant's* line 10 is *greater* than plaintiff's line 10, enter the difference between these two amounts on line 11 under *defendant's* column and leave plaintiff's column blank. [Note that if either of the numbers on line 10 is a *negative* number, you must change the signs when you subtract. For example, $100 minus negative $50 equals $150.]

NOTE TO PLAINTIFF AND DEFENDANT: *The information required to complete the worksheet is known only to the parties. It is the responsibility of the parties to provide this information to the Court so that the Court can set the appropriate amount of child support. The Clerk of Superior Court CANNOT obtain this information or fill out this worksheet for you. If you need assistance, you may contact an attorney or apply for assistance at the IV-D agency within your county.*

AOC-CV-629, Side Two, Rev. 10/02

Monthly Basic Child Support Obligations

Effective October 1, 2002

Combined Gross Monthly Income	Number of Children					
	One	Two	Three	Four	Five	Six
$0 - $800	$50	$50	$50	$50	$50	$50
$850	$50	$50	$50	$50	$50	$50
$900	$57	$58	$59	$59	$60	$61
$950	$92	$93	$94	$95	$96	$97
$1,000	$126	$127	$129	$130	$132	$133
$1,050	$160	$162	$164	$166	$168	$169
$1,100	$195	$197	$199	$201	$203	$206
$1,150	$229	$232	$234	$237	$239	$242
$1,200	$264	$266	$269	$272	$275	$278
$1,250	$275	$300	$303	$306	$309	$313
$1,300	$284	$332	$336	$339	$343	$347
$1,350	$293	$364	$368	$372	$376	$380
$1,400	$303	$397	$401	$406	$410	$414
$1,450	$312	$429	$434	$439	$444	$448
$1,500	$321	$453	$467	$472	$477	$482
$1,550	$330	$466	$500	$505	$511	$516
$1,600	$339	$478	$533	$538	$544	$550
$1,650	$348	$491	$565	$572	$578	$584
$1,700	$357	$504	$584	$605	$611	$618
$1,750	$367	$517	$599	$638	$645	$652
$1,800	$376	$530	$614	$671	$678	$685
$1,850	$384	$541	$626	$698	$711	$719
$1,900	$392	$552	$639	$712	$744	$752
$1,950	$400	$563	$652	$726	$777	$785
$2,000	$408	$574	$664	$741	$810	$819
$2,050	$416	$585	$677	$755	$830	$852
$2,100	$425	$596	$689	$769	$845	$886
$2,150	$433	$607	$702	$783	$861	$919
$2,200	$441	$618	$715	$797	$876	$953
$2,250	$449	$629	$727	$811	$892	$970
$2,300	$457	$640	$740	$825	$907	$987
$2,350	$465	$651	$752	$839	$923	$1,004
$2,400	$473	$662	$765	$853	$938	$1,020
$2,450	$481	$673	$776	$866	$952	$1,036
$2,500	$489	$683	$788	$879	$967	$1,052
$2,550	$497	$694	$800	$892	$981	$1,067
$2,600	$505	$704	$811	$905	$995	$1,083
$2,650	$513	$715	$823	$918	$1,010	$1,098
$2,700	$520	$725	$835	$931	$1,024	$1,114
$2,750	$528	$735	$847	$944	$1,038	$1,130
$2,800	$536	$746	$858	$957	$1,053	$1,145
$2,850	$544	$756	$870	$970	$1,067	$1,161
$2,900	$552	$767	$882	$983	$1,081	$1,176
$2,950	$559	$777	$893	$996	$1,096	$1,192

Combined Gross Monthly Income	Number of Children					
	One	Two	Three	Four	Five	Six
$3,000	$567	$787	$904	$1,008	$1,109	$1,206
$3,050	$574	$796	$915	$1,020	$1,122	$1,221
$3,100	$580	$806	$926	$1,032	$1,135	$1,235
$3,150	$587	$815	$937	$1,044	$1,149	$1,250
$3,200	$594	$825	$947	$1,056	$1,162	$1,264
$3,250	$601	$834	$958	$1,069	$1,175	$1,279
$3,300	$608	$844	$969	$1,081	$1,189	$1,293
$3,350	$615	$854	$980	$1,093	$1,202	$1,308
$3,400	$622	$863	$991	$1,105	$1,215	$1,322
$3,450	$629	$873	$1,002	$1,117	$1,229	$1,337
$3,500	$636	$882	$1,013	$1,129	$1,242	$1,351
$3,550	$643	$892	$1,023	$1,141	$1,255	$1,366
$3,600	$650	$901	$1,034	$1,153	$1,268	$1,380
$3,650	$657	$911	$1,045	$1,165	$1,282	$1,395
$3,700	$664	$920	$1,056	$1,177	$1,295	$1,409
$3,750	$669	$928	$1,065	$1,187	$1,306	$1,421
$3,800	$675	$936	$1,073	$1,197	$1,316	$1,432
$3,850	$681	$944	$1,082	$1,206	$1,327	$1,444
$3,900	$687	$952	$1,090	$1,216	$1,337	$1,455
$3,950	$693	$959	$1,099	$1,225	$1,348	$1,466
$4,000	$698	$967	$1,108	$1,235	$1,358	$1,478
$4,050	$704	$975	$1,116	$1,245	$1,369	$1,489
$4,100	$710	$983	$1,125	$1,254	$1,380	$1,501
$4,150	$716	$991	$1,133	$1,264	$1,390	$1,512
$4,200	$722	$999	$1,142	$1,273	$1,401	$1,524
$4,250	$728	$1,006	$1,151	$1,283	$1,411	$1,535
$4,300	$733	$1,014	$1,159	$1,293	$1,422	$1,547
$4,350	$739	$1,022	$1,168	$1,302	$1,432	$1,558
$4,400	$745	$1,030	$1,176	$1,312	$1,443	$1,570
$4,450	$748	$1,034	$1,180	$1,316	$1,448	$1,575
$4,500	$751	$1,037	$1,182	$1,318	$1,450	$1,578
$4,550	$754	$1,039	$1,184	$1,320	$1,453	$1,580
$4,600	$756	$1,042	$1,186	$1,323	$1,455	$1,583
$4,650	$759	$1,044	$1,188	$1,325	$1,457	$1,586
$4,700	$761	$1,047	$1,190	$1,327	$1,460	$1,588
$4,750	$764	$1,050	$1,192	$1,329	$1,462	$1,591
$4,800	$767	$1,052	$1,194	$1,332	$1,465	$1,594
$4,850	$769	$1,055	$1,196	$1,334	$1,467	$1,596
$4,900	$772	$1,057	$1,198	$1,336	$1,470	$1,599
$4,950	$774	$1,060	$1,200	$1,338	$1,472	$1,602
$5,000	$777	$1,062	$1,202	$1,340	$1,474	$1,604
$5,050	$779	$1,065	$1,204	$1,343	$1,477	$1,607
$5,100	$782	$1,068	$1,206	$1,345	$1,479	$1,609
$5,150	$785	$1,071	$1,209	$1,348	$1,483	$1,613
$5,200	$788	$1,075	$1,213	$1,352	$1,488	$1,619
$5,250	$791	$1,079	$1,217	$1,357	$1,493	$1,624

Combined Gross Monthly Income	Number of Children					
	One	Two	Three	Four	Five	Six
$5,300	$794	$1,083	$1,221	$1,362	$1,498	$1,630
$5,350	$798	$1,087	$1,225	$1,366	$1,503	$1,635
$5,400	$801	$1,091	$1,229	$1,371	$1,508	$1,641
$5,450	$804	$1,095	$1,234	$1,375	$1,513	$1,646
$5,500	$807	$1,098	$1,238	$1,380	$1,518	$1,652
$5,550	$811	$1,102	$1,242	$1,385	$1,523	$1,657
$5,600	$814	$1,106	$1,246	$1,389	$1,528	$1,663
$5,650	$817	$1,110	$1,250	$1,394	$1,533	$1,668
$5,700	$820	$1,114	$1,254	$1,399	$1,538	$1,674
$5,750	$824	$1,118	$1,258	$1,403	$1,543	$1,679
$5,800	$827	$1,122	$1,262	$1,408	$1,548	$1,685
$5,850	$830	$1,126	$1,267	$1,412	$1,553	$1,690
$5,900	$833	$1,130	$1,271	$1,417	$1,559	$1,696
$5,950	$837	$1,134	$1,275	$1,422	$1,564	$1,702
$6,000	$840	$1,138	$1,280	$1,427	$1,569	$1,708
$6,050	$843	$1,142	$1,284	$1,432	$1,575	$1,713
$6,100	$846	$1,146	$1,288	$1,436	$1,580	$1,719
$6,150	$850	$1,150	$1,293	$1,441	$1,585	$1,725
$6,200	$853	$1,154	$1,297	$1,446	$1,591	$1,730
$6,250	$856	$1,158	$1,301	$1,451	$1,596	$1,736
$6,300	$859	$1,162	$1,305	$1,455	$1,601	$1,742
$6,350	$863	$1,166	$1,310	$1,460	$1,606	$1,748
$6,400	$866	$1,170	$1,314	$1,465	$1,612	$1,753
$6,450	$869	$1,174	$1,318	$1,470	$1,617	$1,759
$6,500	$872	$1,178	$1,323	$1,475	$1,622	$1,765
$6,550	$876	$1,182	$1,327	$1,479	$1,627	$1,771
$6,600	$879	$1,186	$1,331	$1,484	$1,633	$1,776
$6,650	$882	$1,190	$1,335	$1,489	$1,638	$1,782
$6,700	$885	$1,194	$1,340	$1,494	$1,643	$1,788
$6,750	$888	$1,198	$1,344	$1,499	$1,648	$1,793
$6,800	$892	$1,202	$1,348	$1,503	$1,654	$1,799
$6,850	$895	$1,206	$1,353	$1,508	$1,659	$1,805
$6,900	$898	$1,210	$1,357	$1,513	$1,664	$1,811
$6,950	$901	$1,214	$1,361	$1,518	$1,669	$1,816
$7,000	$904	$1,217	$1,365	$1,522	$1,674	$1,821
$7,050	$905	$1,218	$1,366	$1,523	$1,675	$1,822
$7,100	$906	$1,219	$1,366	$1,523	$1,676	$1,823
$7,150	$907	$1,220	$1,367	$1,524	$1,677	$1,824
$7,200	$908	$1,221	$1,368	$1,525	$1,678	$1,825
$7,250	$909	$1,222	$1,369	$1,526	$1,679	$1,826
$7,300	$910	$1,223	$1,370	$1,527	$1,680	$1,828
$7,350	$911	$1,224	$1,370	$1,528	$1,681	$1,829
$7,400	$912	$1,225	$1,371	$1,529	$1,682	$1,830
$7,450	$912	$1,226	$1,372	$1,530	$1,683	$1,831
$7,500	$913	$1,227	$1,373	$1,531	$1,684	$1,832
$7,550	$914	$1,228	$1,374	$1,532	$1,685	$1,833

Combined Gross Monthly Income	Number of Children					
	One	Two	Three	Four	Five	Six
$7,600	$915	$1,229	$1,374	$1,532	$1,686	$1,834
$7,650	$916	$1,230	$1,375	$1,533	$1,687	$1,835
$7,700	$917	$1,231	$1,376	$1,534	$1,688	$1,836
$7,750	$918	$1,232	$1,377	$1,535	$1,689	$1,837
$7,800	$919	$1,233	$1,378	$1,536	$1,690	$1,838
$7,850	$920	$1,233	$1,378	$1,537	$1,691	$1,839
$7,900	$921	$1,234	$1,379	$1,538	$1,692	$1,841
$7,950	$922	$1,235	$1,380	$1,539	$1,693	$1,842
$8,000	$923	$1,236	$1,381	$1,540	$1,694	$1,843
$8,050	$924	$1,237	$1,382	$1,541	$1,695	$1,844
$8,100	$924	$1,238	$1,383	$1,542	$1,696	$1,845
$8,150	$925	$1,239	$1,383	$1,542	$1,697	$1,846
$8,200	$926	$1,240	$1,384	$1,543	$1,698	$1,847
$8,250	$927	$1,241	$1,385	$1,544	$1,699	$1,848
$8,300	$928	$1,242	$1,386	$1,545	$1,700	$1,849
$8,350	$929	$1,243	$1,387	$1,546	$1,701	$1,850
$8,400	$932	$1,247	$1,391	$1,551	$1,706	$1,856
$8,450	$936	$1,253	$1,397	$1,558	$1,714	$1,864
$8,500	$941	$1,259	$1,403	$1,565	$1,721	$1,873
$8,550	$945	$1,264	$1,410	$1,572	$1,729	$1,881
$8,600	$949	$1,270	$1,416	$1,579	$1,737	$1,890
$8,650	$954	$1,276	$1,423	$1,586	$1,745	$1,898
$8,700	$958	$1,282	$1,429	$1,593	$1,753	$1,907
$8,750	$963	$1,288	$1,435	$1,601	$1,761	$1,916
$8,800	$967	$1,294	$1,442	$1,608	$1,768	$1,924
$8,850	$971	$1,299	$1,448	$1,615	$1,776	$1,933
$8,900	$976	$1,305	$1,455	$1,622	$1,784	$1,941
$8,950	$980	$1,311	$1,461	$1,629	$1,792	$1,950
$9,000	$984	$1,317	$1,467	$1,636	$1,800	$1,958
$9,050	$989	$1,323	$1,474	$1,643	$1,808	$1,967
$9,100	$993	$1,328	$1,480	$1,650	$1,815	$1,975
$9,150	$997	$1,334	$1,487	$1,658	$1,823	$1,984
$9,200	$1,002	$1,340	$1,493	$1,665	$1,831	$1,992
$9,250	$1,006	$1,346	$1,499	$1,672	$1,839	$2,001
$9,300	$1,010	$1,352	$1,506	$1,679	$1,847	$2,009
$9,350	$1,015	$1,358	$1,512	$1,686	$1,855	$2,018
$9,400	$1,019	$1,363	$1,519	$1,693	$1,863	$2,026
$9,450	$1,023	$1,369	$1,525	$1,700	$1,870	$2,035
$9,500	$1,028	$1,375	$1,531	$1,707	$1,878	$2,044
$9,550	$1,032	$1,381	$1,538	$1,715	$1,886	$2,052
$9,600	$1,036	$1,387	$1,544	$1,722	$1,894	$2,061
$9,650	$1,041	$1,392	$1,551	$1,729	$1,902	$2,069
$9,700	$1,045	$1,398	$1,557	$1,736	$1,910	$2,078
$9,750	$1,049	$1,404	$1,563	$1,743	$1,917	$2,086
$9,800	$1,052	$1,408	$1,567	$1,747	$1,922	$2,091
$9,850	$1,055	$1,411	$1,571	$1,752	$1,927	$2,096

Combined Gross Monthly Income	Number of Children					
	One	Two	Three	Four	Five	Six
$9,900	$1,058	$1,415	$1,575	$1,756	$1,932	$2,102
$9,950	$1,061	$1,419	$1,579	$1,761	$1,937	$2,107
$10,000	$1,064	$1,423	$1,583	$1,765	$1,941	$2,112
$10,050	$1,067	$1,427	$1,587	$1,769	$1,946	$2,118
$10,100	$1,070	$1,431	$1,591	$1,774	$1,951	$2,123
$10,150	$1,073	$1,434	$1,595	$1,778	$1,956	$2,128
$10,200	$1,077	$1,438	$1,599	$1,783	$1,961	$2,134
$10,250	$1,080	$1,442	$1,603	$1,787	$1,966	$2,139
$10,300	$1,083	$1,446	$1,607	$1,792	$1,971	$2,144
$10,350	$1,086	$1,450	$1,611	$1,796	$1,976	$2,150
$10,400	$1,089	$1,454	$1,615	$1,801	$1,981	$2,155
$10,450	$1,092	$1,457	$1,619	$1,805	$1,986	$2,160
$10,500	$1,095	$1,461	$1,623	$1,810	$1,991	$2,166
$10,550	$1,098	$1,465	$1,627	$1,814	$1,995	$2,171
$10,600	$1,101	$1,469	$1,631	$1,819	$2,000	$2,176
$10,650	$1,104	$1,473	$1,635	$1,823	$2,005	$2,182
$10,700	$1,107	$1,477	$1,639	$1,827	$2,010	$2,187
$10,750	$1,110	$1,480	$1,643	$1,832	$2,015	$2,192
$10,800	$1,113	$1,484	$1,647	$1,836	$2,020	$2,198
$10,850	$1,116	$1,488	$1,651	$1,841	$2,025	$2,203
$10,900	$1,119	$1,492	$1,655	$1,845	$2,030	$2,208
$10,950	$1,122	$1,496	$1,659	$1,850	$2,035	$2,214
$11,000	$1,125	$1,499	$1,663	$1,854	$2,039	$2,219
$11,050	$1,128	$1,503	$1,667	$1,858	$2,044	$2,224
$11,100	$1,131	$1,507	$1,671	$1,863	$2,049	$2,229
$11,150	$1,134	$1,511	$1,675	$1,867	$2,054	$2,235
$11,200	$1,137	$1,515	$1,679	$1,872	$2,059	$2,240
$11,250	$1,140	$1,518	$1,683	$1,876	$2,064	$2,245
$11,300	$1,143	$1,522	$1,687	$1,881	$2,069	$2,251
$11,350	$1,146	$1,526	$1,691	$1,885	$2,074	$2,256
$11,400	$1,149	$1,530	$1,695	$1,889	$2,078	$2,261
$11,450	$1,152	$1,534	$1,699	$1,894	$2,083	$2,267
$11,500	$1,155	$1,537	$1,703	$1,898	$2,088	$2,272
$11,550	$1,158	$1,541	$1,706	$1,903	$2,093	$2,277
$11,600	$1,161	$1,545	$1,710	$1,907	$2,098	$2,282
$11,650	$1,164	$1,549	$1,714	$1,912	$2,103	$2,288
$11,700	$1,167	$1,553	$1,718	$1,916	$2,108	$2,293
$11,750	$1,170	$1,556	$1,722	$1,920	$2,112	$2,298
$11,800	$1,173	$1,560	$1,726	$1,925	$2,117	$2,304
$11,850	$1,176	$1,564	$1,730	$1,929	$2,122	$2,309
$11,900	$1,178	$1,567	$1,734	$1,933	$2,126	$2,313
$11,950	$1,181	$1,570	$1,737	$1,937	$2,131	$2,318
$12,000	$1,183	$1,574	$1,741	$1,941	$2,135	$2,323
$12,050	$1,186	$1,577	$1,745	$1,945	$2,140	$2,328
$12,100	$1,188	$1,580	$1,748	$1,949	$2,144	$2,333
$12,150	$1,191	$1,584	$1,752	$1,953	$2,149	$2,338

Combined Gross Monthly Income	Number of Children					
	One	Two	Three	Four	Five	Six
$12,200	$1,194	$1,587	$1,756	$1,957	$2,153	$2,343
$12,250	$1,196	$1,590	$1,759	$1,961	$2,158	$2,347
$12,300	$1,199	$1,594	$1,763	$1,966	$2,162	$2,352
$12,350	$1,201	$1,597	$1,766	$1,970	$2,167	$2,357
$12,400	$1,204	$1,600	$1,770	$1,974	$2,171	$2,362
$12,450	$1,206	$1,603	$1,774	$1,977	$2,175	$2,367
$12,500	$1,208	$1,606	$1,777	$1,981	$2,179	$2,371
$12,550	$1,211	$1,609	$1,780	$1,985	$2,183	$2,376
$12,600	$1,213	$1,612	$1,784	$1,989	$2,188	$2,380
$12,650	$1,215	$1,616	$1,787	$1,992	$2,192	$2,384
$12,700	$1,218	$1,619	$1,790	$1,996	$2,196	$2,389
$12,750	$1,220	$1,622	$1,794	$2,000	$2,200	$2,393
$12,800	$1,222	$1,625	$1,797	$2,004	$2,204	$2,398
$12,850	$1,225	$1,628	$1,800	$2,007	$2,208	$2,402
$12,900	$1,227	$1,631	$1,804	$2,011	$2,212	$2,407
$12,950	$1,229	$1,634	$1,807	$2,015	$2,216	$2,411
$13,000	$1,232	$1,637	$1,810	$2,018	$2,220	$2,416
$13,050	$1,234	$1,640	$1,814	$2,022	$2,224	$2,420
$13,100	$1,237	$1,643	$1,817	$2,026	$2,228	$2,425
$13,150	$1,239	$1,646	$1,820	$2,030	$2,233	$2,429
$13,200	$1,241	$1,649	$1,824	$2,033	$2,237	$2,434
$13,250	$1,244	$1,652	$1,827	$2,037	$2,241	$2,438
$13,300	$1,246	$1,655	$1,830	$2,041	$2,245	$2,442
$13,350	$1,248	$1,658	$1,834	$2,045	$2,249	$2,447
$13,400	$1,251	$1,661	$1,837	$2,048	$2,253	$2,451
$13,450	$1,253	$1,664	$1,840	$2,052	$2,257	$2,456
$13,500	$1,255	$1,667	$1,844	$2,056	$2,261	$2,460
$13,550	$1,258	$1,670	$1,847	$2,059	$2,265	$2,465
$13,600	$1,260	$1,673	$1,850	$2,063	$2,269	$2,469
$13,650	$1,262	$1,677	$1,854	$2,067	$2,274	$2,474
$13,700	$1,265	$1,680	$1,857	$2,071	$2,278	$2,478
$13,750	$1,267	$1,683	$1,860	$2,074	$2,282	$2,483
$13,800	$1,269	$1,686	$1,864	$2,078	$2,286	$2,487
$13,850	$1,272	$1,689	$1,867	$2,082	$2,290	$2,491
$13,900	$1,274	$1,692	$1,870	$2,086	$2,294	$2,496
$13,950	$1,276	$1,695	$1,874	$2,089	$2,298	$2,500
$14,000	$1,279	$1,698	$1,877	$2,093	$2,302	$2,505
$14,050	$1,281	$1,701	$1,880	$2,097	$2,306	$2,509
$14,100	$1,283	$1,704	$1,884	$2,100	$2,310	$2,514
$14,150	$1,286	$1,707	$1,887	$2,104	$2,315	$2,518
$14,200	$1,288	$1,710	$1,890	$2,108	$2,319	$2,523
$14,250	$1,290	$1,713	$1,894	$2,112	$2,323	$2,527
$14,300	$1,293	$1,716	$1,897	$2,115	$2,327	$2,532
$14,350	$1,295	$1,719	$1,900	$2,119	$2,331	$2,536
$14,400	$1,297	$1,722	$1,904	$2,123	$2,335	$2,541
$14,450	$1,300	$1,725	$1,907	$2,126	$2,339	$2,545

Combined Gross Monthly Income	Number of Children					
	One	Two	Three	Four	Five	Six
$14,500	$1,302	$1,728	$1,911	$2,130	$2,343	$2,549
$14,550	$1,304	$1,731	$1,914	$2,134	$2,347	$2,554
$14,600	$1,307	$1,734	$1,917	$2,138	$2,351	$2,558
$14,650	$1,309	$1,738	$1,921	$2,141	$2,356	$2,563
$14,700	$1,311	$1,741	$1,924	$2,145	$2,360	$2,567
$14,750	$1,314	$1,744	$1,927	$2,149	$2,364	$2,572
$14,800	$1,316	$1,747	$1,931	$2,153	$2,368	$2,576
$14,850	$1,318	$1,750	$1,934	$2,156	$2,372	$2,581
$14,900	$1,321	$1,753	$1,937	$2,160	$2,376	$2,585
$14,950	$1,323	$1,756	$1,941	$2,164	$2,380	$2,590
$15,000	$1,325	$1,759	$1,944	$2,167	$2,384	$2,594
$15,050	$1,328	$1,762	$1,947	$2,171	$2,388	$2,598
$15,100	$1,330	$1,765	$1,951	$2,175	$2,392	$2,603
$15,150	$1,332	$1,768	$1,954	$2,178	$2,396	$2,607
$15,200	$1,334	$1,770	$1,956	$2,181	$2,399	$2,610
$15,250	$1,336	$1,772	$1,958	$2,184	$2,402	$2,613
$15,300	$1,338	$1,775	$1,961	$2,186	$2,405	$2,616
$15,350	$1,340	$1,777	$1,963	$2,189	$2,407	$2,619
$15,400	$1,342	$1,779	$1,965	$2,191	$2,410	$2,622
$15,450	$1,344	$1,782	$1,967	$2,194	$2,413	$2,625
$15,500	$1,346	$1,784	$1,970	$2,196	$2,416	$2,628
$15,550	$1,348	$1,786	$1,972	$2,199	$2,419	$2,631
$15,600	$1,350	$1,788	$1,974	$2,201	$2,421	$2,634
$15,650	$1,352	$1,791	$1,976	$2,204	$2,424	$2,637
$15,700	$1,354	$1,793	$1,979	$2,206	$2,427	$2,640
$15,750	$1,355	$1,795	$1,981	$2,209	$2,430	$2,643
$15,800	$1,357	$1,798	$1,983	$2,211	$2,432	$2,646
$15,850	$1,359	$1,800	$1,985	$2,214	$2,435	$2,650
$15,900	$1,361	$1,802	$1,988	$2,216	$2,438	$2,653
$15,950	$1,363	$1,804	$1,990	$2,219	$2,441	$2,656
$16,000	$1,365	$1,807	$1,992	$2,221	$2,444	$2,659
$16,050	$1,367	$1,809	$1,995	$2,224	$2,446	$2,662
$16,100	$1,369	$1,811	$1,997	$2,226	$2,449	$2,665
$16,150	$1,371	$1,814	$1,999	$2,229	$2,452	$2,668
$16,200	$1,373	$1,816	$2,001	$2,232	$2,455	$2,671
$16,250	$1,375	$1,818	$2,004	$2,234	$2,457	$2,674
$16,300	$1,377	$1,820	$2,006	$2,237	$2,460	$2,677
$16,350	$1,379	$1,823	$2,008	$2,239	$2,463	$2,680
$16,400	$1,381	$1,825	$2,010	$2,242	$2,466	$2,683
$16,450	$1,383	$1,827	$2,013	$2,244	$2,469	$2,686
$16,500	$1,385	$1,830	$2,015	$2,247	$2,471	$2,689
$16,550	$1,387	$1,832	$2,017	$2,249	$2,474	$2,692
$16,600	$1,389	$1,834	$2,019	$2,252	$2,477	$2,695
$16,650	$1,390	$1,836	$2,022	$2,254	$2,480	$2,698
$16,700	$1,392	$1,839	$2,024	$2,257	$2,482	$2,701
$16,750	$1,394	$1,841	$2,026	$2,259	$2,485	$2,704

Combined Gross Monthly Income	Number of Children					
	One	Two	Three	Four	Five	Six
$16,800	$1,396	$1,843	$2,029	$2,262	$2,488	$2,707
$16,850	$1,398	$1,846	$2,031	$2,264	$2,491	$2,710
$16,900	$1,400	$1,848	$2,033	$2,267	$2,494	$2,713
$16,950	$1,402	$1,850	$2,035	$2,269	$2,496	$2,716
$17,000	$1,404	$1,852	$2,038	$2,272	$2,499	$2,719
$17,050	$1,406	$1,855	$2,040	$2,274	$2,502	$2,722
$17,100	$1,408	$1,857	$2,042	$2,277	$2,505	$2,725
$17,150	$1,410	$1,859	$2,044	$2,280	$2,507	$2,728
$17,200	$1,412	$1,862	$2,047	$2,282	$2,510	$2,731
$17,250	$1,414	$1,864	$2,049	$2,285	$2,513	$2,734
$17,300	$1,416	$1,866	$2,051	$2,287	$2,516	$2,737
$17,350	$1,418	$1,868	$2,053	$2,290	$2,519	$2,740
$17,400	$1,420	$1,871	$2,056	$2,292	$2,521	$2,743
$17,450	$1,422	$1,873	$2,058	$2,295	$2,524	$2,746
$17,500	$1,423	$1,875	$2,060	$2,297	$2,527	$2,749
$17,550	$1,425	$1,878	$2,063	$2,300	$2,530	$2,752
$17,600	$1,427	$1,880	$2,065	$2,302	$2,532	$2,755
$17,650	$1,429	$1,882	$2,067	$2,305	$2,535	$2,758
$17,700	$1,431	$1,884	$2,069	$2,307	$2,538	$2,761
$17,750	$1,433	$1,887	$2,072	$2,310	$2,541	$2,764
$17,800	$1,435	$1,889	$2,074	$2,312	$2,544	$2,767
$17,850	$1,437	$1,891	$2,076	$2,315	$2,546	$2,770
$17,900	$1,439	$1,894	$2,078	$2,317	$2,549	$2,773
$17,950	$1,441	$1,896	$2,081	$2,320	$2,552	$2,776
$18,000	$1,443	$1,898	$2,083	$2,322	$2,555	$2,780
$18,050	$1,445	$1,900	$2,085	$2,325	$2,557	$2,783
$18,100	$1,447	$1,903	$2,087	$2,328	$2,560	$2,786
$18,150	$1,449	$1,905	$2,090	$2,330	$2,563	$2,789
$18,200	$1,451	$1,907	$2,092	$2,333	$2,566	$2,792
$18,250	$1,453	$1,910	$2,094	$2,335	$2,569	$2,795
$18,300	$1,455	$1,912	$2,097	$2,338	$2,571	$2,798
$18,350	$1,456	$1,914	$2,099	$2,340	$2,574	$2,801
$18,400	$1,458	$1,916	$2,101	$2,343	$2,577	$2,804
$18,450	$1,460	$1,919	$2,103	$2,345	$2,580	$2,807
$18,500	$1,462	$1,921	$2,106	$2,348	$2,582	$2,810
$18,550	$1,464	$1,923	$2,108	$2,350	$2,585	$2,813
$18,600	$1,466	$1,926	$2,110	$2,353	$2,588	$2,816
$18,650	$1,468	$1,928	$2,112	$2,355	$2,591	$2,819
$18,700	$1,470	$1,930	$2,115	$2,358	$2,594	$2,822
$18,750	$1,472	$1,932	$2,117	$2,360	$2,596	$2,825
$18,800	$1,474	$1,935	$2,119	$2,363	$2,599	$2,828
$18,850	$1,476	$1,937	$2,121	$2,365	$2,602	$2,831
$18,900	$1,478	$1,939	$2,124	$2,368	$2,605	$2,834
$18,950	$1,480	$1,942	$2,126	$2,370	$2,608	$2,837
$19,000	$1,482	$1,944	$2,128	$2,373	$2,610	$2,840
$19,050	$1,484	$1,946	$2,131	$2,376	$2,613	$2,843

Combined Gross Monthly Income	Number of Children					
	One	Two	Three	Four	Five	Six
$19,100	$1,486	$1,948	$2,133	$2,378	$2,616	$2,846
$19,150	$1,488	$1,951	$2,135	$2,381	$2,619	$2,849
$19,200	$1,489	$1,953	$2,137	$2,383	$2,621	$2,852
$19,250	$1,491	$1,955	$2,140	$2,386	$2,624	$2,855
$19,300	$1,493	$1,958	$2,142	$2,388	$2,627	$2,858
$19,350	$1,495	$1,960	$2,144	$2,391	$2,630	$2,861
$19,400	$1,497	$1,962	$2,146	$2,393	$2,633	$2,864
$19,450	$1,499	$1,964	$2,149	$2,396	$2,635	$2,867
$19,500	$1,501	$1,967	$2,151	$2,398	$2,638	$2,870
$19,550	$1,503	$1,969	$2,153	$2,401	$2,641	$2,873
$19,600	$1,505	$1,971	$2,155	$2,403	$2,644	$2,876
$19,650	$1,507	$1,974	$2,158	$2,406	$2,646	$2,879
$19,700	$1,509	$1,976	$2,160	$2,408	$2,649	$2,882
$19,750	$1,511	$1,978	$2,162	$2,411	$2,652	$2,885
$19,800	$1,513	$1,980	$2,164	$2,413	$2,655	$2,888
$19,850	$1,515	$1,983	$2,167	$2,416	$2,658	$2,891
$19,900	$1,517	$1,985	$2,169	$2,418	$2,660	$2,894
$19,950	$1,519	$1,987	$2,171	$2,421	$2,663	$2,897
$20,000	$1,521	$1,990	$2,174	$2,424	$2,666	$2,900

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